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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 410

LOUIS JACOBS, PLAINTIFF IN ERROR,

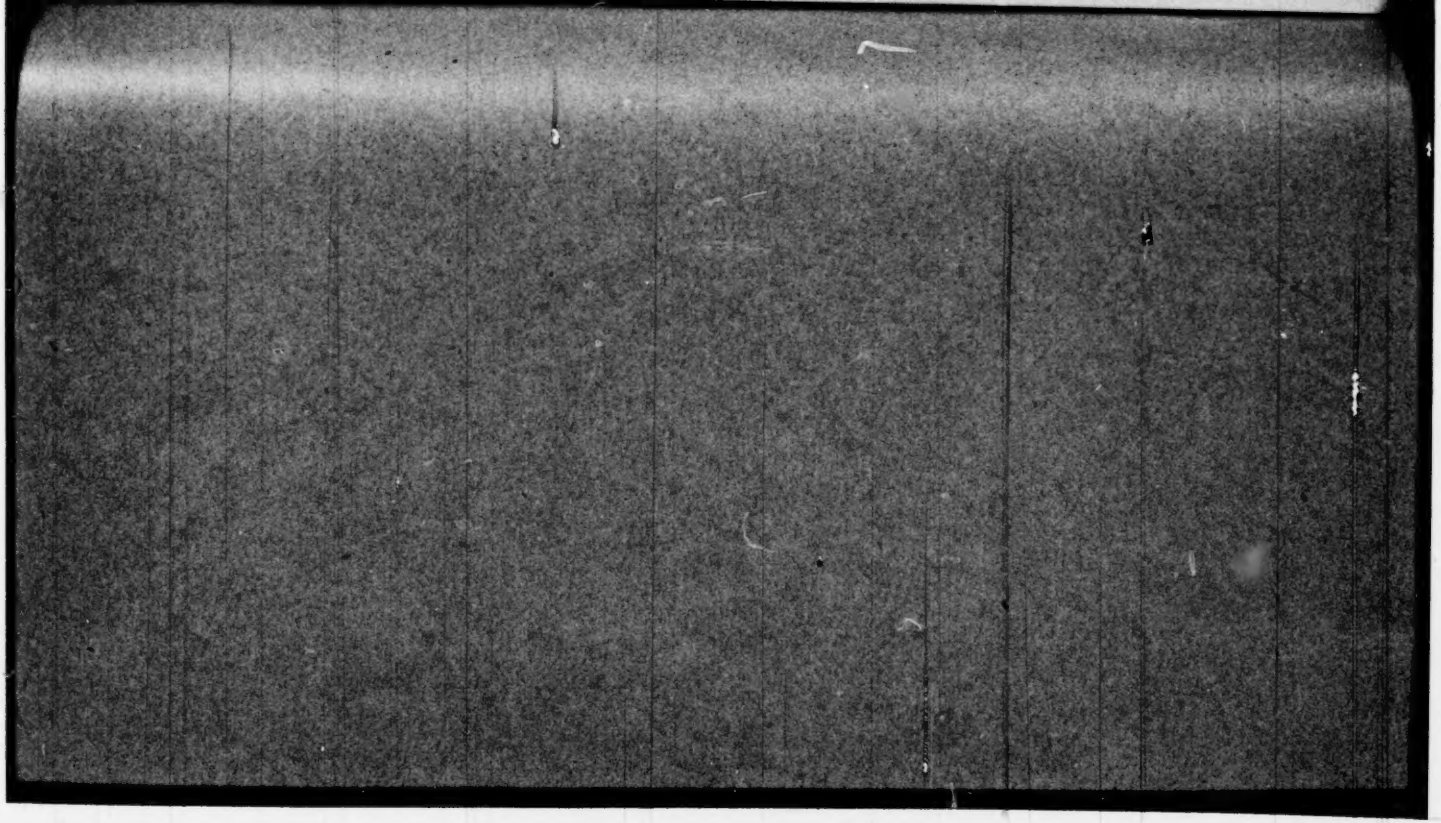
vs.

[illegible] MARKS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED SEPTEMBER 1, 1900.

(17,895.)



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1 At a supreme court begun and held at Springfield, on Tuesday, the fifth day of June, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; Joseph N. Carter, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the 18th day of August, A. D. 1899, there was filed in the office of the clerk of said court a certain transcript of record of the circuit court of Cook county and of the appellate court of first district, together with an affidavit; which said affidavit and transcripts are in the words and figures following, viz:

* * * * * * * *

2 And thereupon there issued a certain *scire facias* and notice to non-resident defendants in error; which said *scire facias* with return and notice are in the words and figures following, viz:

STATE OF ILLINOIS, } ss:
Supreme Court, }

The People of the State of Illinois to the sheriff of Cook county, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the appellate court of Illinois, first district, before the judge thereof, between Louis Jacobs and Dora Marks, it is said manifest error hath intervened, to the injury of the said Louis Jacobs, as we are informed by his complaint, the records and proceedings of which said judgment we have caused to be brought into our supreme court of the State of Illinois, at
3 Springfield, before the justices thereof, to correct the errors in the same in due form and manner according to law:

Therefore we command you that by good and lawful men of your county you give notice to the said Dora Marks that she be and appear before the justices of our said supreme court, at the next term of said court, to be holden at Springfield, in said State, on the first Tuesday in October, A. D. 1899, to hear the record and proceedings aforesaid and the errors assigned, if she shall see fit, and further to do and receive what said court shall order in this behalf; and have you then and there the names of those by whom you shall give the said Dora Marks notice, together with this writ.

Witness James H. Cartwright, chief justice of our said court, and the seal thereof, at Springfield, this eighteenth day of August, in the year of our Lord one thousand eight hundred and ninety-nine.

CHRISTOPHER MAMER,
Clerk of Supreme Court.

[SEAL.]

P'd 10.

1—410

The within-named defendant not found in my county this 3d day of October, 1899.

ERNEST J. MAGERSTADT, *Sheriff*,
By WILLIAM BUSSE, *Deputy*.

Blum & Blum, 87 Washington St., room 508.

STATE OF ILLINOIS:

Supreme Court.

LOUIS JACOBS } *vs.* DORA MARKS. } Error to Appellate Court of Illinois, First District.

Whereas the said Louis Jacobs has sued out a writ of error from said supreme court to reverse a judgment obtained by said
4 Dora Marks against said Louis Jacobs in the said appellate court of Illinois, first district, which said writ of error is now pending in said supreme court; and whereas a writ of *scire facias* has been duly issued herein, returnable on the first day of the next term of said supreme court, to be holden at Springfield, in said State, on the first Tuesday in October next, according to law; and whereas also it appears by affidavit on file in the clerk's office of said supreme court that the said Dora Marks is a non-resident of the State of Illinois and without the reach of the process of said supreme court:

Now, therefore, you, the said Dora Marks, the said defendant in error, whose non-residence appears as aforesaid, are hereby notified to be and appear before the justices of said supreme court, at the next term of said court, to be holden at Springfield, in said State, on the first Tuesday in October next, to hear the record and proceedings brought into said supreme court on return of said writ of error and the errors assigned, if you shall see fit, and further to do and receive what said court shall order in this behalf.

Dated this 18th day of August, A. D. 1899.

CHRISTOPHER MAMER, *Clerk*.

BLUM & BLUM, *Attorneys*. 19–26–2–9.

5 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } *Cook County*, } *ss*:

Pleas before the Honorable R. W. Clifford, one of the judges of the circuit court of Cook county, at a term thereof begun and held in the court-house, at Chicago, in said county and State, on the third Monday, being the fifteenth day, of November, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States the one hundred and twenty-second.

Present: Honorable R. W. Clifford, one of the judges of the circuit court of Cook county, State of Illinois; Charles S. Deneen, State's attorney; James Pease, sheriff.

Attest: JOHN A. COOKE, *Clerk*.

Be it remembered that heretofore, to wit, on the 4th day of June, A. D. 1896, a certain people's writ of summons issued out of the office of the clerk of said court and under the seal thereof, directed to the sheriff of Cook county to execute; which said writ together with the return of the sheriff thereon endorsed are in words and figures following, to wit:

6-9 STATE OF ILLINOIS, } ss.:
Cook County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon Louis Jacobs, if he shall be found in your county, personally to be and to appear before the circuit court of Cook county on the first day of the term thereof, to be holden at the court-house, in the city of Chicago, in said Cook county, on the third Monday of June, 1896, to answer unto Cora Marks in a plea of trespass on the case, to the damage of said plaintiff, as it is said, in the sum of four thousand dollars.

And have you then and there this writ, with an indorsement thereon in what manner you shall have executed the same.

Witness Frank J. Gaulter, clerk of our said court, and the seal thereof, at Chicago aforesaid, this 4th day of June, A. D. 1896.

FRANK J. GAULTER, *Clerk.*

P'd 78.

Served this writ on the within-named defendant, Louis Jacobs, by reading to him, this 9th day of June, 1896.

JAMES PEASE, *Sheriff,*
By D. W. NICKERSON, *Deputy.*

* * * * * * *

10 STATE OF ILLINOIS, } ss.:
County of Cook, }

In the Circuit Court of Cook County.

DORA MARKS }
vs.
LOUIS JACOBS. }

Dora Marks, by John W. Byam and Charles L. Mahoney, her attorneys, complains of Louis Jacobs, defendant, of a plea of trespass on the case.

For that whereas, before and at the time of committing of
11 the grievances by the defendant, as hereinafter mentioned, the defendant was engaged in business in Chicago, Cook county, Illinois.

And plaintiff avers that the defendant desired to join with one Nathan Neufeldt in the business of the manufacture and sale of furniture at, to wit, the town of Escanaba, in the State of Michigan, and to incorporate a company for the purpose of carrying on said last enterprise.

And plaintiff further avers that the defendant was a man of small means and was required by said Nathan Neufeldt to furnish more money to the enterprise than the defendant had, and for that purpose was required by the said Neufeldt to induce some third person to put money into the said enterprise who would agree to become one of the corporation for the purpose of carrying on the said scheme of manufacturing and selling furniture.

And plaintiff further avers that the defendant, being anxious to join the said Neufeldt in said scheme or enterprise and being further desirous to induce the plaintiff to join with him and said Neufeld in said scheme for incorporation and the enterprise of sale and manufacture of furniture at, to wit, Escanaba, in the State of Michigan, heretofore, to wit, at Chicago, Cook county, Illinois, on or about the 15th day of June, A. D. 1893, wrongfully and injuriously contriving and intending to deceive, defraud, and ignore the plaintiff in this behalf, falsely, fraudulently, and deceitfully represented and asserted to the plaintiff that said Nathan Neufeldt was a man of large wealth and means, the owner of the house he lived in at Chicago, which said defendant averred was worth twenty thousand dollars, and the owner of a factory at Chicago, which said defendant averred was worth sixty thousand dollars ($60,000); that said Neufeldt would contribute twenty-five thousand dollars ($25,000) in cash as his share of the money to be put into said corporation
12 at its beginning, and that he, defendant, would pay into the said corporation the sum of twelve thousand five hundred dollars ($12,500.00); and thereupon heretofore, to wit, on the day and year last aforesaid, the plaintiff, confiding in the said representations and assertions of the defendant, at the request of the defendants, agreed to pay to said defendant the sum of five thousand dollars ($5,000), to be applied about the business of the corporation to be formed of the plaintiff and defendant and Nathan Neufeldt for the purpose of manufacture and sale of furniture at Escanaba, Michigan.

And the defendant, by them falsely, fraudulently, and deceitfully pretending and representing to the plaintiff that the said false, fraudulent, and deceitful representations of the defendant were true, caused the plaintiff, on the day and year aforesaid, to pay to the defendant the said sum of five thousand dollars ($5,000) for the purpose of becoming a member of the corporation to be formed of the plaintiff and defendant and one Neufeldt for the manufacture and sale of furniture at Escanaba, in the State of Michigan, whereas, in truth and in fact, the said Neufeldt did not own the said house he lived in nor a factory at Chicago worth twenty thousand dollars ($20,000) and sixty thousand dollars respectively ($60,000), nor did he own any real estate, house, or factory, nor did the said Neufeldt promise or intend to pay to the said corporation and enterprise the sum of twenty-five thousand dollars ($25,000) in cash, nor did the defendant intend to put into the said corporation and enterprise twelve thousand five hundred dollars ($12,5000) in cash, as the defendant at the time of his making his said false and deceitful representations well knew; and the plaintiff further saith that the de-

fendant, by means of the promises on the day and year aforesaid
falsely and fraudulently deceived the plaintiff and induced
13 & 14 her to become a member of the corporation formed of the
plaintiff and defendant and said Neufeldt and known as
the Chicago Furniture Company of Escanaba, Michigan, and to take
shares in the same, and thereby the said shares of stock in the said
corporation have become and are of no use or value to the plaintiff,
and so the defendant falsely deceived and defrauded the plaintiff, to
her damage of ten thousand dollars ($10,000), and therefore she
brings this suit, etc.

JOHN A. BYAM AND
C. L. MAHONEY,
Att'ys for Plaintiff.

15 * * * * * * *

And afterwards, to wit, on the 16th day of June, A. D. 1896, a certain appearance and a certain demurrer *was* filed in the office of the clerk of said court in words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Cook County, }

In the Circuit Court of Cook County.

DORA MARKS }
vs.
LOUIS JACOBS. }

16–23 We hereby enter our appearance as attorneys for the defendant, Louis Jacobs.

BLUM & BLUM.

* * * * * * *

24 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook Co., Ill.

DORA MARKS }
vs. } Gen. No., 157,718; Term No., 11579.
LOUIS JACOBS. }

And now comes the plaintiff, and as to the plea of the defendant by him first above pleaded to the affidavit for attachment and whereof he has put himself upon the country doth the like.

CHARLES L. MAHONEY,
JOHN W. BYAM,
Att'ys for Plaintiff.

STATE OF ILLINOIS, } ss:
County of Cook, }

In Circuit Court of Cook Co.

DORA MARKS }
vs. } 157,718, 11579.
LOUIS JACOBS. }

And now comes the plaintiff, and as to the plea of the defendant first above pleaded and whereof he has put himself upon the country doth the like.

CHARLES L. MAHONEY,
JOHN W. BYAM,
Att'y- for Pl'ffs.

25 And afterwards, to wit, on the 23rd day of April, A. D. 1897, a certain additional plea was filed in the office of the clerk of said court in words and figures following, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

DORA MARKS }
vs. }
LOUIS H. JACOBS. }

And for a further plea in this behalf the defendant says that the plaintiff ought not to have her aforesaid action against him, the defendant, because he says that after the making of the said alleged false representations by the defendant and after the plaintiff had parted with said sum of four thousand dollars on the strength thereof, as set out in the declaration, the plaintiff on or about the 4th day of December, 1893, instituted an action in the circuit court of the State of Michigan in and for the county of Delta against the Chicago Furniture & Lumber Company, a corporation, to recover the said sum of four thousand dollars: that in said cause said Dora Marks was the plaintiff and The Chicago Furniture and Lumber Company, a corporation, was the defendant, and that afterwards service was duly had upon the said corporation, and the said corporation entered its appearance in said cause and the said circuit court of Delta county, Michigan, acquired jurisdiction of the parties to said cause and of the subject-matter thereof; that afterwards the said plaintiff and the said defendant came to a settlement of the said cause of action, and at a general term of the said circuit court for the county of Delta, and held at the court-house, in the city
26 of Escanaba, in said county, on July 25th, 1894, the court entered an order in said cause; which order is as follows:

"This cause having been settled, it is hereby discontinued by consent of both parties without cost to either party;" which said order was duly entered in said court by the Honorable John W. Stone,

circuit judge of said court; all of which will more fully appear by the record of said court of said cause; that the said cause of action set forth in the declaration in this cause is brought upon the same claim upon which the said action was brought by the said Dora Marks against the said Chicago Furniture & Lumber Company, as in this plea stated, to wit, to recover the said four thousand dollars paid by her on her subscription, as set out in the declaration, and not for a different or other cause of action, and so the defendant says the plaintiff has received satisfaction and payment of her said claim; and this the defendant is ready to verify. Wherefore he prays judgment if the plaintiff ought to have her aforesaid action against him, etc.

And for a further plea in this behalf the defendant says that the plaintiff ought not to have her aforesaid action against him, the defendant, because he says that after the occurrence of the grievances in said declaration mentioned and after the plaintiff had subscribed for said stock, as set forth in the declaration, and paid the sum of four thousand dollars, to wit, on or about the 4th day of December, 1893, the said plaintiff commenced an action against the Chicago Furniture & Lumber Company, a corporation, in the circuit court of Michigan in and for Delta county, which was then and ever since has been a court of record in and for the State of Michigan, to recover the sum of four thousand dollars from the said Chicago Furniture & Lumber Company; that on said 4th day of December, 1893,
27 the said Dora Marks, plaintiff in said action, filed in said court an affidavit which is in words and figures as follows:

STATE OF MICHIGAN, } ss:
County of Delta, }

Dora Marks, of the city of Denver, in the State of Colorado, being duly sworn, deposes and says that she is the plaintiff named in the annexed writ of attachment; that The Chicago Furniture & Lumber Company, a corporation organized and doing business under the laws of Michigan, the defendant named in said writ, is justly indebted to her in the sum of four thousand dollars, as near as may be, over and above all legal set-off, and that the same is now due and *upon.*

And the deponent further says that she has good reason to believe that the said Chicago Furniture & Lumber Company fraudulently contracted the debt and incurred the obligation respecting which this suit is brought.

DORA MARKS.

Sworn to and subscribed before me this 4th day of December, A. D. 1893.

HARRY H. ALLYN,
Notary Public in and for Delta County, Michigan.

That afterwards a writ of attachment was issued out of said court in said cause and a large amount of property of said defendant corporation attached; that service was duly had upon said corporation and it entered its appearance in said cause, and said circuit court of

Delta county acquired jurisdiction of said parties and the subject-matter of said suit, and thereafter, at a general term of the said circuit court of the county of Delta, commenced and held at
28 the court-house, in the city of Escanaba, in said county *in said county* of Delta and State of Michigan, on July 25th, 1894, before the Honorable John W. Stone, judge of said court, the following order was entered in said cause, to wit:

"This cause having been settled, it is hereby discontinued by consent of both parties without cost to either party."

That this suit is based upon the same claim on which the said suit of Dora Marks *vs.* The Chicago Furniture & Lumber Company was brought, and that the said settlement was a settlement of the same claim on which this suit is based, and the said plaintiff has had full satisfaction and payment of her said claim; and this the defendant is ready to verify. Wherefore he prays judgment if the plaintiff ought to have her aforesaid action against him, etc.

And for a further plea in this behalf the defendant says that the plaintiff ought not to have her aforesaid action against him, the defendant, because he says that after the making of the said alleged false representations set forth in the declaration in this cause, to wit, on or about the 4th day of December, 1893, and after the plaintiff had subscribed for the said stock and paid for the same, as set forth in said declaration, the plaintiff, in order to recover the said sum of four thousand dollars which she had paid on said subscription, instituted, as plaintiff, in the circuit court of the State of Michigan in and for the county of Delta, an action entitled Dora Marks *vs.* The Chicago Furniture & Lumber Company, and on said 4th day of December, 1893, she filed in said court, which was at said time a court of record and has ever since continued to be a court of record, an affidavit subscribed and sworn to by her; which affidavit is as follows:

STATE OF MICHIGAN, }
County of Delta, } *ss:*

29 Dora Marks, of the city of Denver, in the State of Colorado, being duly sworn, deposes and says that she is the plaintiff named in the annexed writ of attachment; that The Chicago Furniture & Lumber Company, a corporation organized and doing business under the laws of Michigan, the defendant named in said writ, is justly indebted to her in the sum of four thousand dollars, as near as may be, over and above all legal set-off, and that the same is now due and *upon.*

And this deponent further says that she has good reason to believe that the said Chicago Furniture & Lumber Company fraudulently contracted the debt and incurred the obligation respecting which this suit is brought.

DORA MARKS.

Sworn and subscribed before me this 4th day of December, A. D. 1893.

HARRY H. ALLYN,
Notary Public in and for Delta County, Michigan.

That thereupon there issued a certain writ of attachment out of said circuit court in and for Delta county, Michigan, in the name of the people of the State of Michigan, directed to the sheriff of said county of Delta, commanding him that he attach so much of the lands, tenements, goods, chattels, moneys, and effects of the defendant, The Chicago Furniture & Lumber Company, a corporation organized and doing business under the laws of Michigan, not exempt from execution, wheresoever the same may be found within the said county of Delta, as will be sufficient to satisfy the demand of Dora Marks and costs of suit, and safely keep the same to satisfy any judgment that may be recovered by the plaintiff in said attachment, and that he summon the defendant to be and appear before the said circuit court, at the court-house, in the city of Escanaba, on Tuesday, the 2d day of January, 1894, at ten o'clock in the forenoon of said day, to answer
30 the plaintiff and to make due return of this writ, which said writ of attachment was signed under the hand of the clerk of said court, with the seal thereof attached, and was duly delivered to the then sheriff of said county of Delta, who made a return on said writ that he had duly levied upon the goods and chattels of said defendant, and that he had served the said writ upon the president of the said corporation; that by virtue of and under said writ the sheriff had seized a large amount of property of the said corporation, being of the value of upwards of the sum of eight thousand dollars; that thereafter said defendant corporation entered its appearance in said cause, and the said circuit court of Delta county, Michigan, acquired jurisdiction of the parties thereto and the subject-matter thereof; that afterwards, to wit, on the 18th day of December, 1893, a motion to dissolve said attachment came up before said court and the motion was granted and the attachment dissolved; that thereupon the said corporation threatened, by its president, and was about to institute an action for damages against the said Dora Marks for the wrongful issuing out of said attachment, and that thereupon the said Dora Marks and the said Chicago Furniture & Lumber Company came to an agreement and settlement of said causes of action between them, and it was thereby agreed by and between the said corporation and the said Dora Marks that the said corporation should forego its right to commence an action for damages against the said Dora Marks on account of the suing out of the said writ of attachment, and in consideration thereof that the said Dora Marks should dismiss her said action, to wit, the said suit in attachment, against the Chicago Furniture & Lumber Company; that, in compliance with the terms of said agreement, the said circuit court of Delta county, State of Michigan, on the 25th day of July, 1894, entered an order in said cause in the words as fol-
31 lows:

"This cause having been settled, it is hereby discontinued by consent of both parties without cost to either party;" all of which proceedings and judgment will more fully appear by the records of said cause remaining in said circuit court of Delta county.

That said cause of action so commenced in the circuit court of Delta county, Michigan, was based upon the same claim on which

present suit is based, to wit, to *receive* the four thousand dollars paid by her on her stock subscription, as set out in the declaration, and said settlement of said suit against said corporation was a settlement of the same claim on which the present suit is based, and so the defendant says that the said plaintiff has received satisfaction and payment of her said claim; and this the defendant is ready to verify. Wherefore he prays judgment if the plaintiff ought to have her aforesaid action against him, etc.

And for a further plea in this behalf the defendant says that the plaintiff ought not to have her aforesaid action against him, the defendant, because he says:

That after the making of the said alleged false representations set forth in the declaration in this cause, to wit, on or about the 4th day of December, 1893, and after the plaintiff had subscribed for the said stock and paid for the said stock, as set forth in said declaration, the plaintiff, in order to recover the said sum of four thousand dollars which she had paid on said subscription, instituted, as plaintiff, in the circuit court of the State of Michigan in and for the county of Delta, an action entitled Dora Marks *vs.* The Chicago Furniture & Lumber Company, and on said 4th day of December, 1893, she filed in said court, which was at said time a court of record and has ever since continued to be a court of record, an affidavit
32 subscribed and sworn to by her; which affidavit is as follows:

STATE OF MICHIGAN, }
County of Delta, } *ss:*

Dora Marks, of the city of Denver, in the State of Colorado, being duly sworn, deposes and says that she is the plaintiff named in the annexed writ of attachment; that The Chicago Furniture & Lumber Company, a corporation organized and doing business under the laws of Michigan, the defendant named in said writ, is justly indebted to her in the sum of four thousand dollars, as near as may be, over and above all legal set-off, and that the same is now due and *upon.*

And the deponent further says that she has good reason to believe that the said Chicago Furniture & Lumber Company fraudulently contracted the debt and incurred the obligation respecting which the suit is brought.

DORA MARKS.

Sworn to and subscribed before me this 4th day of December, A. D. 1893.

HARRY H. ALLYN,
Notary Public in and for Delta County, Michigan.

That thereupon there issued a certain writ of attachment out of said circuit court in and for Delta county, Michigan, in the name of the people of the State of Illinois, directed to the sheriff of said county of Delta, commanding him that he attach so much of the lands, tenements, goods, chattels, moneys, and effects of the said

defendant, The Chicago Furniture & Lumber Company, a corporation organized and doing business under the laws of Michigan, not exempt from execution, wheresoever the same may be found within the said county of Delta, as will be sufficient to satisfy the demand of Dora Marks and costs of suit, and safely keep the same to
33 satisfy any judgment that may be recovered by the plaintiff in said attachment, and that he summon the defendant to be and appear before the said circuit court, at the court-house, in the city of Escanaba, on Tuesday, the 2d day of January, A. D. 1894, at ten o'clock in the forenoon of said day, to answer the plaintiff and to make due return of this writ; which said writ of attachment was signed under the hand of the clerk of said court, with the seal thereof attached, and was duly delivered to the then sheriff of said county of Delta, who made a return on said writ that he had duly levied upon the goods and chattels of said defendant, and that he had served the said writ upon the president of said corporation; that by virtue of and under said writ the said sheriff had seized a large amount of property of the said corporation of the value of upwards of the sum of eight thousand dollars; that service was duly had upon said corporation and it entered its appearance in said cause, and the said circuit court of Delta county, Michigan, acquired jurisdiction of the parties thereto and the subject-matter thereof; that afterwards, to wit, on the 18th day of December, 1893, a motion to dissolve said attachment came up before said court and the motion was granted and the said attachment dissolved; that thereupon the said corporation intended to and was about to institute an action for damages against the said Dora Marks for the wrongful issuing out of said attachment, and that thereupon the said Dora Marks and the said Chicago Furniture & Lumber Company came to an agreement and settlement of said causes of action between them, and it was thereby agreed by and between the said corporation and the said Dora Marks that the said corporation should forego its right to commence an action for damages against the said Dora Marks on account of the suing out of the said writ of attachment, and in consid-
34 eration thereof that the said Dora Marks should dismiss her said action.

That this defendant was at said time and until the entry of the order hereinafter mentioned a stockholder in said corporation and the holder and owner of twenty-five per cent. of its capital stock.

That in compliance with the terms of the said agreement *in* the said circuit court of Delta county, State of Michigan, on the 25th day of July, 1894, entered an order in said cause in the words as follows:

"This cause having been settled, it is hereby discontinued by consent of both parties without cost to either party;" which order or judgment will more fully appear from the records of said cause remaining in said circuit court of Delta county; that said cause of action so commenced in the circuit court of Delta county, Michigan, was based upon the same claim on which the present suit is based, to wit, to recover the four thousand dollars paid by her on her stock subscription, as set forth in the declaration, and said settle-

ment of said suit against said corporation was a settlement of the same claim on which the present suit is based.

And so the defendant says that the said plaintiff has received satisfaction and payment of her said claim; and this the defendant is rea-y to verify. Wherefore he prays judgment if the plaintiff ought to have her aforesaid action against him, etc.

BLUM & BLUM,
Attorneys for Defendant.

* * * * * * *

35 And afterwards, to wit, on the 28th day of June, A. D. 1897,
36 a certain replication to additional pleas was filed in the office of the clerk of said court in words and figures following, to wit:

STATE OF ILLINOIS, }
County of Cook, } *ss:*

In the Circuit Court of Cook County.

DORA MARKS }
vs. } Gen'l No., 157,718; term No., 11579.
LOUIS JACOBS. }

And the plaintiff, as to the pleas of the defendant by him secondly, thirdly, fourthly, and fifthly above pleaded, says that she, the plaintiff, by reason of anything in those pleas alleged, ought not to be barred of her aforesaid action, because she says that the said cause of action set forth in the declaration herein is not the same claim as that sued on by the plaintiff herein in the suit of Dora Marks *vs.* The Chicago Furniture & Lumber Company, in the circuit court of Delta county, Michigan, as alleged in the aforesaid pleas, and that she, the plaintiff, did not nor has she at any time received satisfaction of her said claim sued on herein, as above alleged in the aforesaid pleas; and this the plaintiff prays may be inquired of by the country, etc.

CHARLES L. MAHONEY AND
JOHN W. BYAM,
Attorneys for Plaintiff.

* * * * * * *

37 And afterwards, to wit, on the 8th day of February, A. D. 1898, a certain plea was filed in the office of the clerk of said court *nunc pro tunc* as of August 24th, A. D. 1896, in words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Cook County, }

In the Circuit Court of Cook County.

DORA MARKS }
vs.
LOUIS JACOBS. }

And the defendant, by Blum & Blum, his attorneys, comes and defends the wrong and injury when, etc., and says that he is not guilty of the said supposed grievances above laid to his charge, or any or either of them, in manner and form as the plaintiff has above thereof complained against him; and of this the defendant puts himself upon the country, etc.

BLUM & BLUM,
Attorneys for Defendant.

And for a further plea in this behalf the defendant says that the plaintiff ought not to have her aforesaid action against him, the defendant, because he says that there is no cause of action set
38 out in the said declaration, and the matters and things therein set forth do not constitute a cause of action; and of this the defendant puts himself upon the country, etc.

BLUM & BLUM,
Attorneys for Defendant.

Be it remembered that heretofore, to wit, on the 21st day of July, A. D. 1897, a certain verdict was filed in the office of the clerk of said court in words and figures following, to wit:

We, the jury, find the attachment issue in favor of plaintiff.

We, the jury, find the defendant guilty and assess the plaintiff's damages at four thousand dollars ($4,000).

CHARLES J. STANG, *Foreman.*
JOHN PEARSON.
R. C. HILL.
PETER PRINCE.
JOHN YUNKER.
JOHN JOHNSTON.
V. A. FLORUNCE.
J. L. MUNSON.
THOMAS POWELL.
JOHN GRAY.
JOHN R. STOCKWELL.
BOB JUNDRICH.

And afterwards, to wit, on the 29th day of November, A. D. 1897, the following proceedings were had and entered of record in said court, to wit:

* * * * * * *

39–41 Thereupon, on motion of plaintiff's attorney, it is ordered that final judgment be, and the same is hereby, entered

herein, according to the verdict heretofore rendered herein by the jury aforesaid.

Therefore it is considered by the court that the plaintiff do have and recover of and from the defendant, Louis Jacobs, her said damages of four thousand dollars ($4,000.00), in form, as aforesaid, by the jury assessed, together with the costs and charges in this behalf expended, and have execution therefore, as well as execution against the property attached herein by virtue of the writ of attachment issued in said cause. Thereupon the defendant, having entered his exceptions herein, prays an appeal from the judgment of this court to the appellate court in and for the first district of Illinois, which is allowed upon said defendant filing herein his appeal bond in the penal sum of two thousand dollars, to be approved by the court, within twenty days from this date, and his bill of exceptions within thirty days from this date.

* * * * * * *

42–44 And afterwards, to wit, on the 23rd day of April, A. D. 1897, the following proceedings were had and entered of record in said court, to wit:

DORA MARKS
vs.
LOUIS JACOBS. } 157,718.

On motion of defendant's attorney, it is ordered that leave be, and the same is hereby, given defendant to file additional pleas instanter to the plaintiff's declaration filed in said court.

* * * * * * *

45–80 And afterwards, to wit, on the 18th day of November, A. D. 1897, the following proceedings were had and entered of record in said court, to wit:

DORA MARKS
vs.
LOUIS JACOBS. } 157,718 Case.

This cause coming on to be heard upon defendant's motion heretofore entered herein for a new trial in said cause and both issues, after arguments of counsel and due deliberation by the court, said motion is overruled and a new trial denied; whereupon the defendant enters herein her motion in arrest of judgment; which motion is also overruled and denied.

And afterwards, to wit, on the 18th day of December, A. D. 1897, the following proceedings were had and entered of record in said court, to wit:

DORA MARKS
vs.
LOUIS JACOBS. } 157,718 Case.

On motion of defendant's attorney, it is ordered that the appeal bond be, and the same is, reduced to two hundred and fifty dollars;

and, on like motion, it is ordered that the time to file bond and bill of exceptions be, and the same is hereby, extended sixty days and execution stayed until the further order of this court.

* * * * * * *

81 PL'T'F'S EX. 7.

Incorporated under the laws of the State of Michigan.

No. 11. 500 shares.

The Chicago Furniture & Lumber Company, Escanaba, Michigan.

Capital stock, $200,000. Shares, $10.00 each.

This certifies that Dora Marks is the owner of five hundred shares of the capital stock of the Chicago Furniture & Lumber Company, full paid and non-assessable, transferrable only on the books of the corporation in person or by attorney on surrender of this certificate.

In witness whereof the duly authorized officers of this corporation have hereunto subscribed their names and caused the corporate seal to be hereto affixed, at Escanaba, this 29th day of July, A. D. 1893.

L. H. JACOBS, *Secretary.*
NATHAN NEUFELD, *President.*

{ Seal of the Chicago Furniture & Lumber Company, Escanaba, Mich. }

PLAINTIFF'S EX. 7.

Incorporated under the laws of the State of Michigan.

No. 9. 1,500 shares.

The Chicago Furniture & Lumber Company, Escanaba, Michigan.

Capital stock, $200,000. Shares, $10.00 each.

This certifies that Nathan Neufeld is the owner of fifteen hundred shares of the capital stock of the Chicago Furniture
82–165 & Lumber Company, full paid and non-assessable, transferrable only on the books of the corporation in person or by attorney on surrender of this certificate.

In witness whereof the duly authorized officers of this corporation have hereunto subscribed their names and caused the corporate seal to be hereto affixed, at Escanaba, this 29th day of July, A. D. 1893.

L. H. JACOBS, *Secretary.*
NATHAN NEUFELD, *President.*

{ Seal of the Chicago Furniture & Lumber Company, Escanaba, Mich. }

(Endorsed:) For value received I hereby sell, transfer, and assign to Dora Marks the shares of stock within mentioned, and hereby authorize L. H. Jacobs, sec'y, to make the necessary transfer on the books of the corporation.

Witness my hand and seal this 29th day of July, 1893.

NATHAN NEUFELD.

Witnessed by—
L. H. JACOBS.

* * * * * * *

166 Mr. BLUM: I also introduce certified copy of record of proceedings in the circuit court of Delta county, Michigan, in the case of Dora Marks *vs.* The Chicago Furniture and Lumber Company, and ask that the same be marked Defendant's Exhibit "3." It is as follows:

STATE OF MICHIGAN, }
County of Delta, } ss:

The People of the State of Michigan to all to whom these presents shall come, Greeting:

Know ye that we, having inspected the files of the circuit court of Delta county, State of Michigan, find there remain- on file a certain judgment-roll in a certain action of attachment wherein Dora Marks is plaintiff and The Chicago Furniture & Lumber Company is defendant; that said cause was commenced in said court on the 4th day of December, 1893.

Present: The Honorable John W. Stone, sole and presiding circuit judge.

IRA C. JENNINGS,
Prosecuting Attorney for Delta County.
REGUS BEAUCHAMP,
Sheriff of Delta County.

Attest: OSCAR V. LINDEN, *Clerk.*

Be it remembered that heretofore, to wit, on the 4th day of December, 1893, the following affidavit was filed in said court:

[Seal of the Circuit Court of Delta County, Michigan.]

167 STATE OF MICHIGAN, }
County of Delta, } ss:

Dora Marks, of the city of Denver, State of Colorado, being duly sworn, deposes and says that she is the plaintiff named in the annexed writ of attachment; that The Chicago Furniture and Lumber Company, a corporation organized and doing business under the laws of Michigan, the defendant named in the said writ, is justly indebted to her in the sum of four thousand dollars, as near as may be, over and above all legal set-off, and that the same is now due and *upon.*

And this deponent further says that he has good reason to believe that the said Chicago Furniture and Lumber Company fraudulently

contracted the debt and incurred the obligation respecting which this suit is brought.

DORA MARKS.

Sworn to and subscribed before me this 4th day of December, 1893.

HARRY H. ALLYN,
Notary Public in and for Delta County, Mich.

That afterwards, to wit, on the same day, a writ of attachment issued out of said court, which is as follows:

STATE OF MICHIGAN, } ss:
County of Delta, }

The Circuit Court for the County of Delta.

In the name of the people of the State of Michigan, to the sheriff of the county of Delta, Greeting:

[Seal of the Circuit Court, Delta County, Michigan.]

You are commanded to attach so much of the lands, tene-
168 ments, goods, chattels, moneys, and effects of the defendant, The Chicago Furniture & Lumber Company, a corporation organized and doing business under the laws of Michigan, not exempt from execution, wherever the same may be found within the county of Delta, as will be sufficient to satisfy the demands of Dora Marks, plaintiff, and costs of suit, and safely keep the same to satisfy any judgment that may be recovered by the plaintiff in this attachment.

And in case you shall seize any property of said defendant in said county, but not sufficient to satisfy said demand and costs, then you are hereby further commanded to seize other property of said defendant subject to attachment sufficient, with that seized in said county of Delta, to satisfy said demand and costs, wherever the same may be found in the State of Michigan.

You are also commanded to summon the defendant, if he be found within said county of Delta or in any other county of the State of Michigan where you may have seized property under and by virtue of this writ, to appear before the circuit court for the county of Delta, at the court-house, in the city of Escanaba, on Tuesday, the 2nd day of January, 1894, at ten o'clock in the forenoon of said day, to answer the plaintiff, and of this writ make due return.

——— ———,
Circuit Judge.

Witness the Honorable John W. Stone, circuit judge, at the city of Escanaba, this 4th day of December, in the year of our Lord one thousand eight hundred and ninety-three.

O. V. LINDEN, *Clerk.*

169 MEAD & JENNINGS,
Att'y for Plaintiff.

That afterwards, on the 18th day of December, 1893, there was filed in said court the petition of the Chicago Furniture & Lumber Company, verified by the affidavit of Nathan Neufeld, which is as follows:

STATE OF MICHIGAN:

The Circuit Court for the County of Delta.

DORA MARKS
vs.
THE CHICAGO FURNITURE AND LUMBER COMPANY.

The petition of The Chicago Furniture & Lumber Company, defendant in the above-entitled cause, respectfully shows that said case was commenced by writ of attachment, issued out of said court, bearing date on the 4th day of December, 1893, directed and delivered to Alex. Roberts, deputy sheriff of said county, and that the said deputy sheriff, by virtue of said writ, on the 4th day of December, 1893, seized and took into his possession and now holds the goods and chattels mentioned in the annexed schedule marked "Exhibit A" and made a part of this petition, which said goods and chattels are the property of this defendant.

Your petitioner further shows that the affidavit annexed to said writ, and upon which the said writ was issued, sets forth that the Chicago Furniture and Lumber Company has fraudulently contracted the debt or incurred the obligation respecting which the suit was brought, and that no other cause for issuing the said attachment was set forth in the said affidavit, and your petitioner denies that it has fraudulently contracted the debt or incurred the obligation respecting which this suit was brought, and it therefore
170–172 prays that the said attachment may be dissolved and that the goods and chattels so seized and taken upon said attachment may be restored to said defendant; and your petitioner further shows that the said defendant is not lawfully entitled to the possession of the said described goods and chattels.

THE CHICAGO FURNITURE & LUMBER CO.,
By N. NEUFELD, *Pres't.*

* * * * * * *

173 That afterwards, to wit, on the 18th day of December, 1893, the following order was entered by said circuit court in said cause by the Hon. John W. Stone, circuit judge of said court; which order is as follows:

STATE OF MICHIGAN:

The Circuit Court for the County of Delta.

DORA MARKS
vs.
THE CHICAGO FURNITURE AND LUMBER COMPANY.

On reading the petition of The Chicago Furniture and Lumber Company, the defendant, duly verified, praying that the attachment

in this cause may be dissolved and the property seized by virtue thereof restored to the said defendant for reasons in said peti-
174 tion set forth, ordered that the said plaintiff be, and is hereby, cited and required to show cause on the 15th day of Dec., instant, at eleven o'clock in the forenoon, before me, at the city of Marquette, Marquette county, why the said attachment should not be dissolved and the property aforesaid restored to the said defendant.

Dated Dec. 8th, 1893.

J. W. STONE,

Circuit Judge for the 25th Circuit of the State of Michigan.

That afterwards, to wit, on the 18th day of December, 1893, the motion to dissolve the attachment in said cause came up before said court and an opinion was filed in said cause as follows:

The Circuit Court for the County of Delta.

DORA MARKS *vs.* THE CHICAGO FURNITURE AND LUMBER Company. } Motion to Dissolve Attachment.

The ground of the attachment in this case was that the defendant fraudulently contracted the debt respecting which the suit was brought. The petition for dissolution of the attachment denies the allegation in the affidavit above stated. Upon the hearing before me the following facts appeared and are found to exist:

The plaintiff, with Nathan Neufeld and Louis H. Jacobs, were the promoters and original stockholders of the defendant corporation. The articles of association were executed June 12, 1893. The capital stock of the corporation was the sum of $200,000. The number of shares were 20,000 of the par value of $10 each. The articles recited that the amount of stock actually paid in at the date thereof
175 was $20,000, being ten per cent of said capital stock. Nathan Neufeld became an original subscriber for 18,250 shares, the plaintiff for 500 shares, and Louis H. Jacobs for 1,250 shares, being the entire amount of stock contemplated by the articles. The object and purpose of the corporation was the manufacture of furniture and lumber, and the operations were to be carried on in the county of Delta.

A few days before the articles were signed the three persons above named, who subsequently became the incorporators, met at the office of George Gallup, Esq., an attorney at Escanaba, and there talked over the scheme. The plaintiff is and then was a widow and not acquainted with or familiar with business of the nature contemplated. She relied largely upon Mr. Jacobs, an old acquaintance and friend, to represent and protect her interests. At this meeting it was agreed that the capital stock of the corporation to be formed should consist of 20,000 shares of $10 each, aggregating $200,000. Mr. Neufeld was at that time the holder of a contract from Frank H. Van Cleave, providing for the transfer to Neufeld or his assigns of the

property known as the Cochrane Roller Mills plant and location upon certain conditions therein stated. Said agreement is made a part of this finding. This contract and the property therein described, together with 40 acres of outlying land which Mr. Neufeld controlled, were to be transferred to defendant company when organized. This plant is located in the city of Escanaba and was visited and examined by the plaintiff at or about this time. Neufeld represented that the said contract and property to be turned over to the corporation were very valuable and worth at least one hundred and twenty-five thousand dollars, whereas in fact it was not worth to exceed twenty-five thousand dollars. It was agreed at this meeting that the contract and property should be turned over to the corporation when formed at the sum of one hundred and fifty-
176 seven thousand five hundred dollars; that Neufeld should pay over to the corporation in cash $25,000, Jacobs, $12,500, and the plaintiff $5,000.00. It was further agreed that the stock issued to Neufeld representing the contract and property to be by him turned over to the corporation should be divided among the incorporators as follows: Plaintiff to have $15,000, additional stock at par; Jacobs, $37,500, to be paid into the treasury $30,000, and Neufeld the remainder. These constituted in substance the representations and terms of the agreement at that time. The plaintiff paid in the $5,000 when the articles were executed.

At the first meeting of the stockholders the plaintiff was not present, but she was elected a director and was so notified. She was later, by the directors, elected a vice-president; Neufeld was elected the president, and Jacobs, secretary and treasurer. The plaintiff attended two or more meetings, but took no active part in the business of the corporation. Neither Neufeld nor Jacobs has paid in the amount of money which they agreed to contribute, and Neufeld has not needed the 40 acres of land. The business has not proved successful. Salaries amounting to $5,000 per annum to Neufeld and $3,500 to Jacobs were agreed upon by the board of directors. Difficulty has arisen in the management of the business which it is not important here to refer to. Before the bringing of this suit on December 4th, 1893, the plaintiff had been re-elected a director and vice-president at the annual meeting on the day held. She declined to act in either capacity—tendered to the president her stock certificates and demanded the repayment of the money paid in by her, less one thousand dollars, which she had loaned from the company.

The testimony before me covered a wide range, but I think that the foregoing are all of the facts necessary to dispose of the case.

To make good the allegation that the debt was fraudulently
177 contracted there must have been on the part of the defendant or of somebody representing and authorized to speak for the defendant a purpose to defraud, and false and fraudulent representations of matters of fact must have been made to the plaintiff. Drake on Attachments, sec. 77.

And false statement by the authorized agents of a corporation in regard to the past or present status of the corporate enterprise or

material matters connected therewith, whereby subscriptions are obtained, is a fraudulent representation.

Cook on Stock, etc., sec. 145.

But it is not every representation that enables a subscriber to set up that he was induced to subscribe by fraud. Thus an honest mistake of judgment as to future business or as to the value of a property or mere matters of opinion as to whether the enterprise will be profitable or successful cannot amount to misrepresentation within the meaning of the law. A misstatement as to the contents of a subscription contract which the subscriber signs is immaterial where he can read but does not.

Cook, sec. 149, and cases cited in notes.

So far we have treated the plaintiff as though she were a mere subscriber of stock in a corporation already formed. But she was more than this. She was one of the promoters of the scheme, and by herself or her friend and agent took part in all the preliminary proceedings. It is true that the property was put in at an overvaluation, but she understood that and took her share of the benefit. Stockholders participating in the issue of paid-up stock upon payment of less than its par value, or who have a knowledge of the act and acquiesce therein, cannot afterwards complain of the transaction, either in their own behalf or in behalf of the corporation. They are bound by estoffel or acquiescence. An issue of stock
178 for property at an overvaluation is distinctly held to be no fraud upon the corporation nor upon the stockholders, all of whom participated.

A participating subscriber cannot withdraw and recover back sums already paid. Such parties are left in the position they have placed themselves. Cook, sec. 39 and 40, and notes. Much less can a director and officer sue the company under such circumstances. There are numerous reasons, it seems to me, why the plaintiff cannot prevail here. When the representations were made the defendant corporation was not yet formed. If there is any liability to the plaintiff it is individual and not corporate liability. It may be said that the corporation received the money and without notice; but it should be borne in mind that the plaintiff was instrumental in giving the corporation life and in launching it in business and in enabling it to obtain credit. She participated in its meetings, it is true, but far enough, it seems to me, to be precluded now, after six months have elapsed, from having the right to rescind her contract relations and maintain this action against the company. The evidence fails to show that there was any such fraud practiced here as the attachment statute contemplates. Upon the facts being denied in the petition for dissolution, the burden is cast upon the plaintiff to make good the cause she alleges by other competent proof, in addition to that contained in her affidavit to the writ. I fail to find such evidence in this case. The parties and the corporation are in an unfortunate condition, but I do not think that it will relieve the difficulty by entertaining proceedings which I am satisfied are not

well grounded. Had the times been more propitious, the business more prosperous, and the corporators more harmonious, I do not think that this plaintiff would be here complaining over her
179 investment. I am satisfied that the plaintiff has not a good and legal cause for suing out the writ of attachment and the same should be dissolved and the property restored to the defendant.

Dated Dec. 16th, 1893.

J. W. STONE,
Circuit Judge.

That afterwards, to wit, on the 18th day of December, 1893, an order was entered by said court before the said judge in said cause; which order is as follows:

The Circuit Court of the County of Delta.

DORA MARKS
vs.
THE CHICAGO FURNITURE AND LUMBER COMPANY.

Application in writing having been made to me by the above-named defendant on the 8th day of December instant for a dissolution of the attachment issued in this cause at the suit of Dora Marks, the above-named plaintiff, and a citation having been issued by me on the same day requiring the plaintiff to show cause before me, at the court-house, in the city of Marquette, on December 15th, 1893, at 11 o'clock a. m., why the said writ of attachment should not be dissolved and the property seized by virtue thereof be restored to the defendant in said attachment, and the said citation having been returned to me, with due proof of the service thereof, and the said parties having appeared before me on the day and year and at the place aforesaid; after hearing the proofs and allegations of the parties and being satisfied that the said plaintiff has not a good and legal cause for suing out such writ, it is therefore ordered that the said attachment be, and the same is hereby, dissolved, and
180–185 that the property seized by virtue thereof be restored to the said Chicago Furniture & Lumber Company, the defendant therein.

Dated December 16th, 1893.

J. W. STONE,
Circuit Judge, 25 Circuit.

That afterwards, to wit, on the 8th day of January, 1894, there was filed in said cause the writ of attachment in said cause, together with the return of the sheriff on said writ, which writ and return heretofore appeared as pages 7 and 8; also the affidavit of the appraisers sworn in by the sheriff to appraise the property seized by him under said writ, and the inventory of appraisal; which documents are as follows:

* * * * * * *

186 That afterwards, to wit, on the 22nd day of January, 1894, there was filed in said cause in this court a declaration which is as follows:

STATE OF MICHIGAN:

In the Circuit Court for the County of Delta.

Dora Marks, plaintiff, hereby, by Mead & Jennings, her attorneys, complains of The Chicago Furniture & Lumber Company, defendant herein, of a plea of trespass on the case upon promises, the said defendant having been duly summoned to answer the said plaintiff.

For that whereas the defendant, on the 4th day of December, A. D. 1893, at the city of Escanaba, in said county of Delta,
187 — indebted to the plaintiff in the sum of seven thousand dollars for the price and value of goods then and there sold and delivered by the plaintiff to the defendant at its request.

And in like sum for the price and value of work then and there done and materials for the same provided by the plaintiff for the defendant at its request.

And in a like sum of money then and there lent by the plaintiff to the defendant at its request.

And in a like sum for money then and there paid by the plaintiff for the use of the defendant at its request.

And in a like sum for money then and there received by the defendant for the use of the plaintiff.

And in a like sum for money then and there found to be due from the defendant to the plaintiff on an account stated between them.

And thereupon the said defendant afterwards and on the day and year aforesaid, in consideration of the premises respectively, then and there promised to the plaintiff to pay to her the several sums of money respectively on request; yet the said defendant has regarded its said promises and has not (although often requested so to do) paid any of the said sums of money or any part thereof, to the plaintiff's damage of seven thousand dollars, and therefore she brings suit, etc.

MEAD & JENNINGS,
Plaintiff's Attorneys.

That afterwards, to wit, on the 25th day of January, 1894, there was filed in said court in said cause a plea which is as follows:

STATE OF MICHIGAN:

The Circuit — for the County of Delta.

DORA MARKS
vs.
188 THE CHICAGO FURNITURE AND LUMBER COMPANY.

Now comes the said defendant, by George Gallup, its attorney, and demands a trial of the matters set forth in the declaration of the said plaintiff.

Dated this 24th day of January, A. D. 1894.

GEORGE GALLUP,
Attorney for Defendant.

That afterwards, to wit, on the 25th day of January, 1894, there was filed in said court in said cause a notice which is as follows:

STATE OF MICHIGAN:

The Circuit Court for the County of Delta.

DORA MARKS
vs.
THE CHICAGO FURNITURE & LUMBER COMPANY.

SIR: Please to take notice that the plaintiff in this cause is required to furnish to the defendant's attorney an account, in writing, of the particulars of his demand for which this action is brought.

Dated this 24th day of January, A. D. 1894.

Yours, etc.,

GEORGE GALLUP,
Attorney for Defendant.

To Mead & Jennings, attorneys for plaintiff.

189 That afterwards, to wit, at a general term of the circuit court for the county of Delta, commenced and held at the court-house, in the city of Escanaba, in said county, on Wednesday, July 25th, A. D. 1894.

Present: The Hon. John W. Stone, circuit judge.

The court opened for business in due form.

DORA MARKS
vs.
THE CHICAGO FURNITURE AND LUMBER COMPANY.

This cause having been settled, it is hereby discontinued by consent of both parties, without cost to either party.

J. W. STONE,
Circuit Judge.

STATE OF MICHIGAN:

The Circuit Court for the County of Delta.

DORA MARKS
vs.
THE CHICAGO FURNITURE AND LUMBER COMPANY.

I, O. V. Linden, clerk of the circuit court of said county and keeper of the records and seal therein, do hereby certify that the above and foregoing is a true and correct copy, compared by me, of the writ of attachment, inventory, appraisement, and all other papers filed in said cause and now in my custody, and of all journals, entries, and orders entered in said cause, and the whole thereof.

190 In testimony whereof I have hereunto set my hand and affixed the seal of the said circuit court, at Escanaba, in said county, this 17th day of February, A. D. 1897.

[Seal of the Circuit Court, Delta County, Michigan.]

O. V. LINDEN, *Clerk.*

STATE OF MICHIGAN, *Delta County,* } *ss:*

In the Circuit Court of the State of Michigan in and for Delta County.

DORA MARKS
vs.
CHICAGO FURNITURE & LUMBER COMPANY.

I, John W. Stone, judge of the circuit court of Delta county, State of Michigan, do hereby certify that O. V. Linden, whose name is subscribed to the preceding exemplification, is the clerk of the said circuit court, duly appointed and sworn, and that full faith and credit are due his official acts. I further certify that the seal affixed to the said exemplification is the seal of the said circuit court of Delta county, Michigan, and that the attestation thereof is in due form of law.

Dated Escanaba, Mich., Feb'y 16th, 1897.

J. W. STONE,
Circuit Judge.

STATE OF MICHIGAN, *Delta County,* } *ss:*

In the Circuit Court of the State of Michigan in and for Delta County.

191–305 DORA MARKS
vs.
THE CHICAGO FURNITURE AND LUMBER COMPANY.

I, O. V. Linden, clerk of the circuit court of Delta county, State of Michigan, do hereby certify that J. W. Stone, whose name is subscribed to the preceding certificate, is the judge of the circuit court

for the county of Delta, State of Michigan, duly elected and sworn, and that the signature of said judge to said certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said circuit court this 17th day of February, A. D. 1897.

[Seal of the Circuit Court, Delta County, Michigan, D. C.]

O. V. LINDEN, *Clerk.*

* * * * * * *

306 PLAINTIFF'S EXHIBIT "11."

Articles of agreement, made and entered into this 14th day of July, A. D. 1894, by and between the Chicago Furniture and Lumber Company, a corporation, of the city of Escanaba, Delta county, Michigan, parties of the first part and Dora Marks of Denver, Colorado, party of the second part. Party of the first part agrees to purchase the twenty thousand dollar- ($20,000) worth of stock of the said Chicago Furniture and Lumber Company, which the party of the second part holds, for the sum of $4,000 to be paid for as follows: $1,000 to Mead and Jennings, attorneys for said party of the second part, as soon as the parties of the first part dispose of their treasury stock to the amount of $1,000 or interest other capital in said company to the amount of $1,000 and $3,000 to said party of the second part, on the day that the plant now occupied by the parties of the first part in said city of Escanaba is turned over to them, and a clear title to the property earned by them. Parties of the first part further agree to discontinue the damage suit now pending against the party of the second part without cost. Said parties of the first part further agree to release said party of the second part from all liability of said second party for the balance due on unpaid stock. Party of the second part agrees to sell her said stock of $20,000 to the parties of the first part and accept payment as aforesaid mentioned. Party of the second part also agrees to
307–310 discontinue the suit now pending under attachment proceedings against party of the first part, without cost. Said stock to be transferred as paid for.

In witness whereof the parties have hereunto set their hands and seals the day and year first above written.

CHICAGO FURNITURE & LUMBER CO.,
Per N. NEUFELD, *Pres't.*

Witness:
SOLOMON GREENHOOT.

[SEAL.]

B. WOLF, *Sec't.*
DORA MARKS.

* * * * * * *

311 The foregoing was all the evidence offered or received on the trial of said cause.

And thereupon counsel for defendant again moved the court to

take the case from the jury; which motion was denied by the court; to which ruling the defendant then and there excepted.

And thereupon the court, on behalf of the plaintiff, gave to the jury the following instructions:

3. If from the evidence in the case and under the instructions of the court the jury shall find the issue for the plaintiff, and that the plaintiff has sustained damages, as charged in the declaration, then, to enable the jury to estimate the amount of such damages, it is not necessary that any witness should have expressed an opinion as to the amount of such damages, but the jury may themselves make such estimate from the facts and circumstances in proof and by considering them in connection with their own general knowledge and experience as intelligent business men.

4. The jury are instructed that the preponderance of evidence in a case is not alone determined by the number of witnesses
312 testifying to a particular fact or state of facts. In determining upon which side the preponderance of the evidence is, the jury should take into consideration the opportunities of the several witnesses for seeing or knowing the things about which they testify; their conduct and demeanor while testifying; their interest or lack of interest, if any, in the result of the suit; the probability or improbability of the truth of their sworn statements, in view of all the other evidence, facts, and circumstances proved on the trial, and from these circumstances determine on which side is the weight of preponderance of the evidence.

5. The preponderance of evidence does not consist alone in the greater number of witnesses testifying to a particular fact or state of facts. The apparent consistency, fairness, and congruity of the evidence and the reputation of the witnesses for truth and veracity, where this is shown by the evidence, are all facts to be considered by you in determining the preponderance of the evidence on either side; you may regard all the surrounding facts and circumstances proved on the trial and give credence to one witness over the other if you think such facts and circumstances warrant it.

6. If the jury believe from the evidence that any witness has wilfully sworn falsely on this trial as to any matter or thing material to the issues in the case, then the jury are at liberty to disregard his or her entire testimony, except in so far as it has been corroborated by other credible evidence or by facts and circumstances proved on the trial.

313 7. If from the evidence in the case and under the instructions of the court the jury shall find the issues for the plaintiff, and that the plaintiff has sustained damages, as charged in the declaration, the court instructs the jury that they may estimate the amount of damages sustained by the plaintiff as the amount of money she was induced, if the evidence shows she was induced, to part with by means of the false and fraudulent representations made to her by the defendants, if the jury find from the evidence that they were false and fraudulent representations, less such sum or sums of money or other property which the plaintiff has received on account of the said amount of money which she was so induced to part with.

To the giving of which instructions by the court and to each of them the defendant, by his counsel, then and there excepted.

And thereupon the court, on behalf of the defendant, gave to the jury the following instructions:

1. You are instructed that under the law a misrepresentation must relate to some past or existing fact or state of facts, and that a mere promise as to what one will do in the future does not constitute a misrepresentation, even if such party does not thereafter do what he promised. In other words, the law is that no representation of a future event, whether in the form of a promise or not, can be a false pretence, for a false pretence must relate to the past or the present.

2. You are instructed that if you find from the evidence that the plaintiff signed a contract on June 8th, 1893, to subscribe for
314 stock, then any misrepresentations made to her after that time with a view to getting her to make such subscription are immaterial and should be disregarded by the jury.

3. The court instructs the jury that in order for the plaintiff to establish her case it is not sufficient for her to prove that the defendant made to her the false representations alleged to have been made, but she must also prove that she relied upon such misrepresentations, and if the jury find from the evidence that such misrepresentations were in fact made, but that the plaintiff did not rely upon them, then your verdict must be for the defendant.

4. You are instructed that the plaintiff cannot maintain this cause unless the evidence shows not only that the defendant not only made to her the false representations alleged in the declaration, but that she relied upon such statements made by the defendant. If, therefore, the jury believe from the evidence that she entered into and signed a contract regarding her subscription before the time such representations were made, then I instruct you, as a matter of law, that the plaintiff did not in fact rely upon such representations, and your verdict must be for the defendant.

5. You are instructed that if you find from the evidence that the misrepresentations claimed by the plaintiff to have been made to her were in fact made by the defendant and relied upon by the plaintiff, yet that the plaintiff cannot recover in this case unless she proves that she was actually damaged by such false represen-
315 tations, and this damage, which is an essential element of an action of this character, must actually and certainly have taken place before this suit was brought. If such damage is not shown to have taken place at such time your verdict must be for the defendant.

6. Upon this question of damage the court further instructs you that in an action of this character a plaintiff can recover only the amount of damage actually proven, and that possible or probable damage cannot be recovered.

7. You are instructed that it is not every false statement of fact that constitutes a misrepresentation, for an action of deceit will lie. To constitute a misrepresentation upon which an action of deceit can be based the evidence must show not merely that a false state-

ment of facts has been made, but that such misstatement was wilfully and knowingly made by the defendant.

9. You are instructed that the presumption of the law is that a paper is executed the day it bears date.

10. You are instructed that a party is presumed by law to have read an instrument signed by him, and also presumed to know the contents thereof.

11. The jury are instructed that even an illiterate person will be bound if he signs an instrument without requiring it to be read.

12. You are instructed that the presumption of the law that the party reads an instrument signed by him cannot be overcome by the mere statement of such party that he did not read it. But
316–318 in order to overcome such presumption he must prove not only that he did not read such paper, but that he was prevented from doing so by some trick or artifice practiced upon him by another.

13. You are instructed that when a party denies that an instrument bearing a certain date and purporting to be executed by him was in fact executed by him on that date, then it is incumbent upon him to prove by evidence that such instrument was in fact not executed by him upon the day it bears date.

15. The court further instructs you that when a plaintiff has accepted satisfaction in full for the jury done him, from whatever source it may come, the law will not permit him to recover again for the same damages.

17. You are instructed that if you find from the evidence that the plaintiff herein instituted a suit in the circuit court of Delta county, Michigan, against the Chicago Furniture & Lumber Company for the purpose of recovering the $4,000 involved in this suit now before you, and that she made a settlement of this cause with the defendant therein or any one else, that the plaintiff is barred from the further prosecution of this suit, and the verdict of the jury must be for the defendant.

And thereupon the court, at the request of the defendant, instructed the jury especially as follows:

Q. Was the agreement signed by Louis H. Jacobs, Nathan Neufeld, and Dora Marks, dated at Escanaba, Mich., June 8th, 1893, signed by plaintiff on said date?

* * * * * * *

319 STATE OF ILLINOIS, } ss.:
County of Cook, }

In the Circuit Court of Cook County.

DORA MARKS }
vs. }
LOUIS H. JACOBS. }

And now comes the defendant, Louis H. Jacobs, by Blum & Blum, his attorneys, and moves the court to set aside the verdict rendered herein and the special finding of the jury herein, and grant a new

trial in this cause, and for grounds in support of his said motion he shows the following:

1. The court erred in admitting improper, incompetent, irrelevant, and immaterial testimony offered on behalf of the plaintiff over the objection of the defendant.

2. The court improperly refused to admit proper evidence offered on behalf of the defendant.

3. The court erred in giving in the instructions and each of them asked on behalf of the plaintiff.

4. The court erred in refusing to give instructions No. 8, 14, 16, 18, 19, 20, and 21, and each of them, asked by the defendant.

5. The finding of the jury is in disregard of and contrary
320 to the instructions of the court.

6. The verdict is contrary to the law and the evidence in the case.

7. The verdict and the action of the court fail to give full faith and credit to the judgment of the circuit court of Delta county, Michigan, in the case of Dora Marks *vs.* The Chicago Furniture and Lumber Company, contrary to art. 4, sec. 1, of the Constitution of the United States, which provides:

"Full faith and credit shall be given in every State to the public acts, records and judicial proceedings of every other State."

8. The court erred in making improper remarks in the presence and hearing of the jury.

And the defendant especially excepts to the only special finding of the jury in response to the following questions asked by the court at the instance of the defendant's attorneys, to wit:

Q. Was the agreement signed by Louis H. Jacobs, Nathan Neufeld, and Dora Marks, dated at Escanaba, Mich., June 8th, 1893, signed by plaintiff on said date? To which question the jury answered "No," on the ground that such finding is contrary to the evidence in the case.

BLUM & BLUM,
Attorneys for Defendant.

* * * * * * *

321 Be it remembered that heretofore, to wit, on the 29th day of January, A. D. 1898, a certain appeal bond was filed in the office of the clerk of said court in words and figures following, to wit:

Appeal Bond.

Appellate Court.

Know all men by these presents that we, Louis Jacobs and Fannie Jacobson, of the county of Cook and State of Illinois, are held and firmly bound unto Dora Marks, also of the same county and State, in the penal sum of two hundred and fifty dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly, by these presents.

Witness our hands and seals this 22nd day of January, A. D. 1898.

The condition of the above obligation is such that whereas the said Dora Marks did on the 29th day of November, A. D. 1897,
322 in the circuit court of Cook county, in the State aforesaid, and of the November term thereof, A. D. 1897, recover a judgment against the above-bounden Louis Jacobs for the sum of four thousand dollars and — cents and sustaining the attachment in said cause, besides costs of suit, from which said judgment of the said circuit court of Cook county the said Louis Jacobs has prayed for and obtained an appeal to the appellate court within and for the first district in said State:

Now, therefore, if the said Louis Jacobs shall duly prosecute his said appeal with effect, and, moreover, pay the amount of the judgment, costs, interests, and damages rendered and to be rendered against him in case the said judgment shall be affirmed in said appellate court, then the above obligation to be void; otherwise to remain in full force and virtue.

LOUIS JACOBS. [SEAL.]
FANNIE JACOBSON. [SEAL.]

R. W. CLIFFORD,
Judge Circuit Court.

O K.
J. W. BYAM,
Att'y for Pl'ff.

STATE OF ILLINOIS, } ss.:
Cook County, }

I, John A. Cooke, clerk of the circuit court of Cook county and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete transcript of the record, except the bill of exceptions, the
323 original of which is incorporated herein by stipulation, in a certain cause lately pending in said court, on the common-law side thereof, between Dora Marks, plaintiff, and Louis Jacobs, defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 15th day of February, 1898.

[SEAL.] JOHN A. COOKE, *Clerk.*

In the Appellate Court of Illinois, First District, March Term, A. D. 1898.

LOUIS H. JACOBS, Appellant,
vs.
DORA MARKS, Appellee. } Assignment of Errors.

And now comes the appellant, Louis H. Jacobs, by Blum & Blum, his attorneys, and says that in the record and proceedings aforesaid

and in rendering the judgment aforesaid there is manifest error in this:

1st. The court erred in advancing said cause for trial and trying it on said advancement during the existence of the judgment of conviction against defendant.

2nd. The court erred in denying defendant's motion to quash the attachment.

3rd. The court erred in denying the motion of appellant to take the case from the jury.

4th. The court erred in admitting improper testimony offered on behalf of the plaintiff.

5th. The court erred in refusing to admit proper evidence offered on behalf of the defendant.

6th. The court erred in refusing to give proper instructions offered on behalf of defendant (appellant herein).

324 7th. The verdict and judgment herein are contrary to the law and the evidence in the case.

8. The court erred in refusing to grant the motion of the defendant to set aside the verdict herein and to grant a new trial.

9. The court erred in refusing to set aside the special finding of the jury herein.

10. The court erred in failing to give full faith and credit to the judgment, records, and judicial proceedings of the circuit court of Delta county, Michigan, in the cause of Dora Marks *vs.* The Chicago Furniture & Lumber Company, as required by art. 4, sec. 1, of the Constitution of the United States, which provides: "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State."

11. The court erred in overruling defendant's demurrer to the declaration in this cause.

12. The court erred in overruling defendant's motion in arrest of judgment.

By reason whereof appellant prays that said judgment may be reversed, etc.

LOUIS H. JACOBS, *Appellant,*
By BLUM & BLUM, *His Attorneys.*

BLUM & BLUM,
Attorneys for Appellant.

325 In the Appellate Court, First District, Illinois.

LOUIS JACOBS, Appellant,
vs.
DORA MARKS, Appellee. } No. 7697. Appeal — Cook Circuit.

I, Thomas N. Jamieson, clerk of the appellate court within and for the first district of Illinois, hereby certify that the transcript of record hereto attached and marked "A" is the original transcript of record filed in said appellate court on the 2 day of March, A. D. 1898, by said appellant.

In testimony whereof I have hereunto set my hand and seal of said court, at Chicago, this 24 day of July, A. D. 1899.

[SEAL.] THOMAS N. JAMIESON,
Clerk of the Appellate Court, First District, Illinois.

326 At a term of the appellate court begun and held at Chicago, on Tuesday, the seventh day of March, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the first district of the State of Illinois.

Present: Hon. Henry V. Freeman, presiding justice; Hon. Oliver H. Horton, justice; Hon. Henry M. Shephard, justice; Ernest J. Magerstadt, sheriff; Thomas N. Jamieson, clerk.

Filed Aug. 19, 1899.

C. MAMER,
Clerk of Supreme Court.

LOUIS JACOBS, Appellant,
vs.
DORA MARKS, Appellee. } No. 7697. Appeal to Cook Circuit.

Be it remembered that on the 18th day of July, A. D. 1899, it being one of the days of the March term, A. D. 1898, certain proceedings were had in said court and entered of record in words and figures following, to wit:

LOUIS JACOBS
vs.
DORA MARKS. } 7697. Appeal Circuit.

This cause, having this day been reached on the call of the docket, was argued by counsel for respective parties, and the court, not being fully advised in the premises, doth order that said cause be taken under advisement.

And afterwards, on the 24th day of January, A. D. 1899, the following proceedings were had and entered of record in said cause, to wit:

327 LOUIS JACOBS, Appellant,
vs.
DORA MARKS, Appellee. } No. 7697. Error to Cook. Appeal from Cook Circuit.

This judgment set aside as per order of Feb. 24, '99. Book 20, page 191.

On this day came again the said parties, and the court, having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, are of the opinion that in the record and proceedings aforesaid and in the rendition of the judgment aforesaid there is manifest error; therefore it is considered by the court that for that error and others in the record and proceedings aforesaid the judgment of the circuit court of Cook county in this behalf rendered be reversed,

annulled, set aside, and wholly for nothing esteemed, and that this cause be remanded to the circuit court of Cook county for such other and further proceedings as to law and justice shall appertain.

And it is further considered by the court that the said appellant recover of and from the said appellee his costs by him in this behalf expended, to be taxed, and that he have execution therefor.

And afterwards, on the 31 day of January, A. D. 1899, the following proceedings were had and entered of record in said cause, to wit:

LOUIS JACOBS
vs. } 7697. Appeal Circuit.
DORA MARKS.

328 This day came appellant, by his counsel, and moved the court to strike out the remanding clause in the judgment rendered by this court, and the court, being fully advised in the premises, doth order that said motion be, and the same is hereby, denied.

And afterwards on the 24th day of February, A. D. 1899, the following proceedings were had and entered of record in said cause, to wit:

LOUIS JACOBS
vs. } 7697. Appeal Circuit.
DORA MARKS.

The court, having considered the petition of appellee praying for a rehearing in said cause, and being now fully advised in the premises, doth order that the prayer of said petition be allowed, and that the judgment heretofore entered in this cause be, and the same is hereby, vacated and set aside, and this cause is now taken by this court under advisement.

And afterwards, on the 26th day of May, A. D. 1899, the following proceedings were had and entered of record in said cause, to wit:

LOUIS JACOBS, Appellant,
vs. } No. 7697. Error to Cook. Appeal from Cook Circuit.
DORA MARKS, Appellee.

On this day came again the said parties, and the court, having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the
329 premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that in that record there is no error: Therefore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwith-

standing the said matters and things therein assigned for error; and it is further considered by the court that the said appellee recover of and from the said appellant her costs by her in this behalf expended, to be taxed, and that she have execution therefor.

And afterwards, on the 15th day of June, A. D. 1899, the following proceedings were had and entered of record in said cause, to wit:

LOUIS JACOBS
vs.
DORA MARKS. } 7697. Appeal Circuit.

This day came appellant, by his counsel, and moved the court for an appeal from the order and judgment of this court in said cause to the supreme court of Illinois; and the court, being fully advised in the premises, doth order that an appeal be allowed herein to the said supreme court on condition that appellant doth, within twenty days from this date, execute and file in said cause a good and sufficient appeal bond, conditioned according to law, in the penal sum of forty-five hundred dollars, with surety thereto to be approved by the court.

And afterwards, on the 15th day of June, A. D. 1899, the following proceedings were had and entered of record in said cause, to wit:

I, Thomas N. Jamieson, clerk of the appellate court in and
330 for the first district of the State of Illinois, do hereby certify that the foregoing is a true copy of the final order and judgment and all other proceedings of the said appellate court in the above-entitled cause, of record in my office.

In testimony whereof I have set my hand and affixed the seal of the said appellate court, at Chicago, this 24th day of July,
[SEAL.] in the year of our Lord one thousand eight hundred and ninety-nine.

THOMAS N. JAMIESON,
Clerk of the Appellate Court of the First District.

In the Supreme Court of Illinois, October Term, A. D. 1899.

LOUIS JACOBS, Plaintiff in Error,
vs.
DORA MARKS, Defendant in Error.

And now comes the plaintiff in error, LOUIS JACOBS, by Blum & Blum, his attorneys, and says that in the record and proceedings aforesaid and in the judgment aforesaid there is manifest error in this:

First. The circuit court erred in advancing said cause for trial against the objection of plaintiff in error and trying it on said advancement during the existence of the judgment of conviction against defendant in the criminal case, and the appellate court erred in not reversing said judgment for said cause.

Second. The circuit court erred in denying the motion of
331 plaintiff in error to quash the writ of attachment herein, and the appellate court erred in not reversing said judgment for said cause.

Third. The circuit court erred in denying the motion of the plaintiff in error to take the case from the jury, and the appellate court erred in not reversing said judgment for said cause.

Fourth. The appellate court erred in not reversing said judgment by reason of the circuit court's improper admission of testimony offered on behalf of the defendant in error herein.

Fifth. The appellate court erred in not reversing said judgment, by reason of the refusal of the circuit court to admit proper evidence offered on behalf of the plaintiff in error herein.

Sixth. The appellate court erred in not reversing said judgment by reason of the refusal of the circuit court to give proper instructions offered on behalf of the plaintiff in error herein.

Seventh. The appellate court erred in not reversing said judgment as contrary to the law and the evidence in the case.

Eighth. The appellate court erred in not reversing said judgment by reason of the refusal of the circuit court to grant the motion of the plaintiff in error to set aside the verdict herein and grant a new trial.

Ninth. The appellate court erred in refusing to reverse the said judgment by reason of the circuit court's error in refusing to set aside the special finding of the jury herein.

Tenth. The appellate court erred in not reversing said judgment by reason of the error of the circuit court in failing to give full faith and credit to the judgment, record, and judicial proceedings of the circuit court of Delta county, Michigan, in the case of Dora Marks *vs.* The Chicago Furniture & Lumber Company, in evidence in this cause, as required by article four, section one, of the Constitution of the United States, which provides, "Full faith and credit shall be given in each State to the public acts, records and judicial
332 proceedings of every other State."

Eleventh. The appellate court erred in not reversing said judgment by reason of the error of the circuit court in overruling defendant's demurrer to the declaration in this cause.

Twelfth. The appellate court erred in not reversing said judgment by reason of the error of the circuit court in overruling the motion in arrest of judgment made by the plaintiff in error.

Thirteenth. The appellate court erred, as did the circuit court, in failing to give full faith and credit to the judgment of the circuit court of Delta county, Michigan, rendered in the case of Dora Marks *vs.* The Chicago Furniture & Lumber Company, and introduced in evidence in this cause, which judgment is as follows: "This cause having been settled, it is hereby discontinued by consent of both parties without cost to either party," as required by said article four, section one, of the Constitution of the United States.

Fourteenth. The courts below erred in failing to hold that said judgment of the circuit court of Delta county, Michigan, constitutes a complete bar to the present cause of action.

Fifteenth. The appellate court erred in not reversing said judgment as against the law.

By reason whereof plaintiff in error prays that said judgment may be reversed, etc.

LOUIS JACOBS,
Plaintiff in Error,
By BLUM & BLUM,
His Attorneys.

BLUM & BLUM,
Attorneys for Plaintiff in Error.

333 At a supreme court begun and held at Springfield on Tuesday, the third day of October, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; Joseph N. Carter, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

334 Be it remembered that afterwards, to wit, on the fourth day of October, A. D. 1899, there was filed in the office of the clerk of said court a certain certificate of publication and entry of appearance in the words and figures following, viz:

Review Printing and Publishing Co., a corporation, publisher of the Chicago Daily Law Bulletin,

Does hereby certify it is the publisher of the Chicago Daily Law Bulletin, and that a notice, of which the annexed printed slip is a true copy, was published for four successive weeks, to wit, four times, in the Chicago Daily Law Bulletin, a secular newspaper published in the city of Chicago, county of Cook and State of Illinois, and of general circulation throughout said county and State, and that the date of the first paper containing the same was the 16th day of August, A. D. 1899, and that the date of the last paper containing same was the 9th day of September, A. D. 1899, and that said company has received $8.50 *dollars* for publishing the same.

Dated at Chicago this 11th day of September, 1899.

REVIEW PRINTING AND PUBLISHING CO., *Publishers,*
By A. G. NEWELL, *Secretary.*

Blum & Blum, 87 Washington St., room 508.

STATE OF ILLINOIS:

Supreme Court.

LOUIS H. JACOBS } *Error to* Appellate Court of Illinois, First District.
vs.
DORA MARKS. }

Whereas the said Louis Jacobs has sued out a writ of error from said supreme court to reverse a judgment obtained by said Dora Marks against said Louis Jacobs in the said appellate court of Illinois, first district, which said writ of error is now pending in said supreme court; and whereas a writ of *scire facias* has been
335 issued herein, returnable on the first day of the next term of said supreme court, to be holden at Springfield, in said State, on the first Tuesday in October next, according to law; and whereas also it appears by affidavit on file in the clerk's office of said supreme court that the said Dora Marks is a non-resident of the State of Illinois and without the reach of the process of said supreme court:

Now, therefore, you, the said Dora Marks, the said defendant in error, whose non-residence appears as aforesaid, are hereby notified to be and appear before the justices of said supreme court at the next term of said court, to be holden at Springfield, in said State, on the first Tuesday in October next, to hear the record and proceedings brought into said supreme court on return of said writ of error and the errors assigned, if you shall see fit, and further to do and receive what said court shall order in this behalf.

Dated this 18th day of August, A. D. 1899.

CHRISTOPHER MAMER, *Clerk.*

BLUM & BLUM, *Attorneys.* 19–26–2–9.

In the Supreme Court of Illinois, October Term, A. D. 1899.

LOUIS JACOBS, Plaintiff in Error, } Writ of Error to Appellate
vs. Court, First District.
DORA MARKS, Defendant in Error. }

We hereby enter the appearance of Dora Marks, defendant in error, and ourselves as her attorneys.

JOHN W. BYAM.
C. L. MAHONEY.

Dated Sept. 30, 1899.

336 And afterwards, to wit, on the 12th day of October, A. D. 1899, certain proceedings were had in said court in words and figures following, viz:

LOUIS JACOBS
vs. } 919. Error to First District.
DORA MARKS.

And now, on this day, comes the said defendant in error and moves the court for leave to file certified copy of appellate-court abstract; which said motion is, by the court, denied.

And afterwards, to wit, on the 14th day of October, A. D. 1899, certain proceedings were had in said court as follows, viz:

LOUIS JACOBS
vs. } 919. Error to First District.
DORA MARKS.

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that plaintiff in error hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said defendant in error having entered motion to affirm said judgment and for costs and *procedendo*, and said motion being taken under advisement for final hearing and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

337 At a supreme court begun and held at Springfield, on Tuesday, the fifth day of December, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; Joseph N. Carter, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the eighteenth day of December, A. D. 1899, the same being one of the days of the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

LOUIS JACOBS
vs. } No. 919. Error to Appellate Court of Illinois, First District.
DORA MARKS.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected as well the

record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that in that record there is no error; therefore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding
338 the said matters and things therein assigned for error; and it is further considered by the court that the said defendant in error recover of and from the said plaintiff in error her costs by her in this behalf expended, and that she have execution therefor.

And thereupon there was filed the opinion of the court in the words and figures following, viz:

339 Docket No. 919, agenda 34, northern div., Oct., '99.

LOUIS JACOBS }
v.
DORA MARKS. }

Per Curiam:

This was an action for deceit, brought by Dora Marks, against Louis Jacobs. The plaintiff sued out an attachment in aid. The defendant appeared and pleaded to the declaration, to which replications were filed, and on a trial the plaintiff recovered a verdict and judgment for $4,000, which was affirmed by the appellate court.

Section 31 of chapter 11 of the statute provides: "That in all actions of trespass and trespass on the case, before a writ of attachment shall be issued the plaintiff, his agent or attorney, shall apply to a judge of a court of record or a master in chancery of the county in which the suit is pending and be examined, under oath, by such judge or master concerning the cause of action; and thereupon such judge or master shall endorse upon the affidavit the amount of damages for which the writ shall issue."

The abstract shows that the defendant entered a motion to quash the attachment, "on the ground that the court, before ordering attachment, did not examine the plaintiff, her agent or attorney, on oath, in open court, as to the character or nature of her case and the clerk had no authority to issue this attachment because the order does not recite that the said judge had examined the plaintiff on oath, etc., and because no order was ever issued by any judge of this court stating the amount for which attachment was issued." The court denied the motion. The statute does not contemplate that an examination should be made before a court in session, but merely that the party desiring an attachment should appear before a judge or a master in chancery; and upon an application of that character no record could well be made of the proceedings before the judge or master. Here it is conceded that the plaintiff appeared before the judge and made the application and the judge ordered the writ, but

what examination the judge made does not appear. It will, however, be presumed, in the absence of a contrary showing, that the judge heard such evidence and made such examination as the law required. We think the motion was properly denied.

It is next claimed in the argument that the plaintiff, both in her declaration and evidence, failed to make out a case. As to
340 the declaration, it appears from the record that the defendant demurred, and after the demurrer was overruled pleaded over. It is a well-settled rule that a plea to the merits after a demurrer has been overruled is a waiver of the defects in the declaration. If the declaration was insufficient and defendant desired to avail of such insufficiency he should have abided by the demurrer. Having failed to do so he cannot now complain of the declaration. It is true, there was here a motion in arrest of judgment; but this was not predicated on the ground that the declaration failed to state a cause of action, but, as appears on page 85 of the abstract, the motion was based on the ground that there was a material variance between the declaration and the evidence. If there was a variance and the defendant desired to avail of the objection, he should have objected to the introduction of the evidence when it was offered on the trial, and the variance should have been pointed out in order that the plaintiff might, if she desired, obviate the difficulty by amendment. He could not wait until the trial was over, and then avail of a variance on motion in arrest of judgment.

As to the evidence, upon an examination it will be found that it fairly tended to establish plaintiff's cause of action. Its sufficiency was settled by the judgment of the appellate court and cannot be considered here.

After defendant's demurrer to the declaration had been overruled in the circuit court, in addition to a plea of the general issue he filed special pleas, in which he set up, in substance, that the plaintiff, on or about the 4th day of December, 1893, instituted an action in the circuit court of Delta county, Michigan, against the Chicago Furniture and Lumber Company, to recover said sum; that service was duly had upon defendant, which entered its appearance in the cause, and said court acquired jurisdiction of the parties to said cause and subject-matter thereof; that afterwards said plaintiff and defendant came to a settlement of said cause, and at a general term of said court, on July 25, 1894, the court entered the following order: "This cause having been settled, it is hereby discontinued by consent of both parties, without cost to either party." The plaintiff filed replication, taking issue on the facts set up in the pleas. Upon the issue formed, evidence was introduced by the respective par-
341 ties, instructions were given to the jury, and a verdict was returned against the defendant on the issues presented. It is now claimed that the facts set up were a bar to plaintiff's action. A written contract was entered into between Dora Marks, the plaintiff, and the Chicago Furniture and Lumber Company, at the time the suit named in the plea was settled and discontinued, which was put in evidence on the trial. From that contract and the other evidence it appears that the furniture and lumber company never com-

plied with the contract under which the suit was discontinued, and the plaintiff never recovered a single dollar in satisfaction of her claim. If the plaintiff in the action had sued the furniture and lumber company and recovered the amount of her damages, and had received satisfaction thereof, it is no doubt true that she could not recover for the same thing from another. But no such case was presented by the evidence. Here, as the evidence showed and as found by the jury, there was no recovery by plaintiff of her damages and no satisfaction. The effect of the transaction between the plaintiff and the furniture and lumber company was a mere dismissal of her action or an abandonment of her action as against the furniture and lumber company, for which she recovered nothing in return, and we are aware of no principle upon which it can be held that the record in the furniture and lumber company case can be treated as a bar to the present action.

It appears that the circuit court, on application of the plaintiff, advanced the cause for a hearing, and this is relied upon as error. The statute authorized the court, for good cause shown, to advance the cause, and the facts shown to the court were in our opinion sufficient to authorize the action of the court.

We find no error in the judgment of the appellate court, and it will be affirmed.

Judgment affirmed.

342 STATE OF ILLINOIS, }
Supreme Court, Northern Grand Division, } *ss:*

I, Christopher Mamer, clerk of the supreme court in and for the northern grand division of the State of Illinois and keeper of the records and seal thereof, do hereby certify that the foregoing pages, 339 to 341, inclusive, is a true copy of the opinion of the said supreme court in the above-entitled cause, of record in my office.

In testimony whereof I have set my hand and affixed the seal of the said supreme court, at Springfield, Aug. 22nd, A. D. 1900.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

C. MAMER,
Clerk of the Supreme Court.

343 UNITED STATES OF AMERICA, *ss:*

In the Supreme Court of the United States of America, October Term, A. D. 1900.

LOUIS JACOBS, Plaintiff in Error,
vs.
DORA MARKS, Defendant in Error. } Assignment of Errors.

* * * * * * *

Now comes the plaintiff in error, Louis Jacobs, by Louis J. Blum and Edgar C. Blum, his attorneys, and respectfully represents that he feels himself to be aggrieved by the proceedings and judgment

of the supreme court of Illinois in the above-entitled cause, and assigns error thereto as follows:

1. The court below erred in failing to give full faith and credit to the judicial record and proceedings of the circuit court of Delta county, State of Michigan, in the case of Dora Marks *vs.* The Chicago Furniture & Lumber Company, which records and proceedings included the following order of court: "This cause having been settled, it is hereby discontinued by consent of both parties;" which said suit, as shown by the evidence in this cause, involved the same subject-matter involved in the present suit, and which said judicial records and proceedings were duly pleaded in bar herein by the plaintiff in error and introduced in evidence on the trial of this cause; and, in failing to hold that said judgment, record, and proceedings of the Michigan court constituted a bar to the present action, the courts below failed to give full faith and credit to the record and judicial proceedings of the said circuit court of Delta county, Michigan, contrary to article 4 of the Constitution of the United States, which provides: "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State."

2. The supreme court of Illinois erred in failing to reverse said judgment by reason of the failure of the courts below to give full faith and credit to said judicial records and proceedings of
344 the circuit court of Delta county, Michigan, as required by said article 4 of the Constitution of the United States.

3. The supreme court of Illinois erred in failing to reverse said judgment by reason of the refusal of the circuit court of Cook county to give the following instruction asked by the plaintiff in error:

"The jury are instructed that it appears by a certified copy of the record of the judgment entered in the case of Dora Marks *vs.* The Chicago Furniture & Lumber Company in the circuit court of Delta county, Michigan, that said cause was settled between said parties; that said cause pending in said Michigan court was based upon the same cause of action on which the present suit is based, and involved the same subject-matter, and that the settlement of said cause constituted a settlement of the present cause of action." By this refusal the said circuit court failed to give full faith and credit to the judicial records and proceedings of the said circuit court of Delta county, Michigan.

4. The court below erred in failing to reverse said judgment by reason of the refusal of the circuit court of Cook county to give the following instruction asked by the plaintiff in error:

"18. You are instructed that the undisputed evidence in this case shows that in December, 1893, the plaintiff herein brought a suit in the circuit court of Delta county, Michigan, against the Chicago Furniture & Lumber Company upon the same cause of action and involved the same subject-matter involved in this suit; that thereafter the parties to said suit came to a settlement thereof, and that settlement is a complete bar to the present action and your verdict must be for the defendant herein." By this refusal the said circuit court failed to give full faith and credit to the judicial records and

proceedings of the said circuit court of Delta county, Michigan, in evidence in this cause.

345. 5. The court below erred in failing to reverse said judgment by reason of the refusal of the circuit court of Cook county to give the following instruction asked by plaintiff in error:

"21. The jury are instructed to find a verdict for the defendant herein." By this refusal the said circuit court failed to give full faith and credit to the judicial records and proceedings of the said circuit court of Delta county, Michigan, in evidence in this cause.

6. The supreme court of Illinois erred in not reversing said judgment by reason of error of the circuit court in denying the motion of plaintiff in error to set aside the verdict and grant a new trial herein on the grounds specified in said motion for new trial that the verdict and the action of the court fail to give full faith and credit to the judgment of the circuit court of Delta county, Michigan, in the case of Dora Marks *vs.* The Chicago Furniture and Lumber Company, contrary to art. 4, sec. 1, of the Constitution of the United States, which provides: "Full faith and credit shall be given in every State to the public acts, records and judicial proceedings of every other State."

7. The judgment of the courts below failed to give full faith and credit to the judicial records and proceedings of the circuit court of Delta county, Michigan, in said case of Dora Marks *vs.* The Chicago Furniture & Lumber Company, and thus deprived the plaintiff in error of his rights and privileges under said article 4 of the Constitution of the United States.

Wherefore the said Louis Jacobs, plaintiff in error, prays the honorable court to examine and correct the errors assigned, and for a reversal of the judgment of the supreme court of Illinois entered in the above-entitled cause.

LOUIS JACOBS,
Plaintiff in Error,
By LOUIS J. BLUM AND
EDGAR C. BLUM,
His Attorneys.

LOUIS J. BLUM AND
EDGAR C. BLUM,
Attorneys for Plaintiff in Error.

346 In the Supreme Court of the United States, October Term, 1899.

LOUIS JACOBS, Plaintiff in Error,
vs.
DORA MARKS, Defendant in Error. } Petition for Writ of Error.

To the Honorable George Shiras, associate justice of the Supreme Court of the United States:

The petition of Louis Jacobs respectfully shows that on the eighteenth day of December, A. D. 1899, the supreme court of Illi-

nois rendered a judgment against your petitioner in a certain cause, wherein your petitioner was plaintiff in error and Dora Marks was defendant in error, in the sum of four thousand dollars and costs and awarded execution thereon, as will appear by reference to the record and proceedings in said cause; that said court is the highest court in said State in which a decision of said suit could be had.

And your petitioner claims the right to remove said judgment to the Supreme Court of the United States by writ of error, under section 709 of chapter 11 of the Revised Statutes of the United States, authorizing writ of error to the State courts where any title, right, privilege, or immunity is claimed under the Constitution of the United States and the decision is against the title, right, privilege, or immunity specially set up or claimed by either party under such Constitution, because in said supreme court of Illinois, as well as in the other courts in which said cause was tried, and from which it was appealed to said supreme court of Illinois, your petitioner specially set up and claimed his right, under article 4 of the Constitution of the United States, to have certain judicial records and proceedings of the circuit court of Delta county, Michigan, in the case of Dora Marks against The Chicago Furniture & Lumber Company held as a bar to the further prosecution of the present case; that said judicial records and proceedings included this order of court: "This cause having been settled, it is hereby discontinued by consent of both parties;" that said judicial record and proceedings were duly pleaded in bar by your petitioner and introduced by him in evidence on the trial of this cause, and said suit of Dora Marks *vs.* The Chicago Furniture & Lumber Company involved the same subject-matter involved in the present suit, as shown by the evidence in this cause; and your
347 petitioner specially set up and claimed in the said supreme court of Illinois that the courts below, in failing to hold that said judicial records and proceedings of the Michigan court constituted a bar to the present action, failed to give full faith and credit to the record and judicial proceedings of the said circuit court of Delta county, Michigan, contrary to article 4 of the Constitution of the United States, which provides: "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State;" and your petitioner specially set up and claimed that other errors were committed on said trial, to wit, the errors set forth in the assignment of errors in this court; that the decisions of the supreme court of Illinois and of the courts below were against said claim of your petitioner, all of which appears by the record of the proceedings in said cause, which is herewith submitted; and the reason for which this writ of error is prayed is by reason of the denial of the courts below of the said rights specially set up and claimed by your petitioner to have said judicial records and proceedings of the Michigan court held to be a bar to the present suit under said article 4 of the Constitution of the United States.

Wherefore your petitioner prays the allowance of a writ of error

returnable unto the Supreme Court of the United States and for a citation, and he will ever pray, etc.

LOUIS JACOBS, *Petitioner,*
By LOUIS J. BLUM AND
EDGAR C. BLUM,
Attorneys for Petitioner.

348 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Illinois, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit between Louis Jacobs, plaintiff in error, and Dora Marks, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Louis Jacobs, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 7th day of August, in the year of our Lord one thousand nine hundred.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

The writ of error this day, August 3d, 1900, allowed, and the writ is directed to be issued.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Ct. of the United States.

[Endorsed:] Supreme Court of the United States. Louis Jacobs, plaintiff in error, *vs.* Dora Marks, defendant in error. Writ of error.

349 Know all men by these presents that we, Louis Jacobs, as principal, and Michael McDonald, as surety, are held and firmly bound unto Dora Marks in the full and just sum of five hundred dollars, to be paid to the said Dora Marks, her certain attorneys, executors, administrators, and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this third day of August, in the year of our Lord one thousand nine hundred.

Whereas lately, at a session of the supreme court of the State of Illinois, in a suit depending in said court between Louis Jacobs, plaintiff in error, and Dora Marks, defendant in error, a final judgment was rendered against the said Louis Jacobs, and the said Louis Jacobs having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Dora Marks, citing and admonishing her to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said Louis Jacobs shall prosecute said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

LOUIS JACOBS. [SEAL.]
MICHAEL C. McDONALD. [SEAL.]

Sealed and delivered in presence of—
LOUIS FEDER.
DANIEL M. ROTHSCHILD.

Approved:

——— ———,
Chief Justice of the Supreme Court of Illinois.

O K.
S. W. BURNHAM, *Clerk.*

[Endorsed:] Supreme Court of the United States. Louis Jacobs, plaintiff in error, *vs.* Dora Marks, defendant in error. Bond. And now, to wit, August 3d, 1900, the within bond is hereby approved. George Shiras, Jr., associate justice of the Supreme Court of the United States. Blum & Blum, attorneys and counselors at law, Chicago.

350 UNITED STATES OF AMERICA, *ss:*

To Dora Marks, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days

from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein Louis Jacobs is plaintiff in error and Dora Marks is defendant in error, to show cause, if any there be, why the judgment rendered against the said Louis Jacobs, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States, this third day of August, in the year of our Lord one thousand nine hundred.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

STATE OF ILLINOIS, }
Cook County, } ss:

On this 15th day of August, in the year of our Lord one thousand nine hundred, personally appeared Michael Gesas before me, the subscriber, Daniel M. Rothschild, a notary public in and for Cook county, State of Illinois, and makes oath that he delivered a true copy of the within citation to John W. Byam, the attorney for said Dora Marks, and who was her attorney of record in the supreme court of Illinois in the within cause up to final judgment therein by said supreme court, and he has never withdrawn as such attorney.

MICHAEL GESAS.

Sworn to and subscribed the 15th day of August, A. D. 1900.

[Seal of Daniel M. Rothschild, Notary Public, Cook Co., Ill.]

DANIEL M. ROTHSCHILD,
Notary Public.

Received a copy of the within citation August 18th, 1900.

CHARLES L. MAHONEY,
Att'y for Dora Marks.

351 STATE OF ILLINOIS, }
County of Cook, } ss:

LOUIS JACOBS, Plaintiff in Error, }
vs.
DORA MARKS, Defendant in Error. }

* * * * * * *

On this 21st day of August, 1900, personally appeared Michael Gesas before me, the subscriber, Daniel M. Rothschild, a notary public in and for Cook county, State of Illinois, and made oath that he delivered a true copy of the within and annexed citation to Charles L. Mahoney on August 18th, 1900, and likewise delivered a true copy thereof to A. J. Hirschl and Adolph Kurz on the 20th day of August, 1900, and on the 21st day of August he also delivered a true copy of the said citation to said Adolph Kurz for James Rosenthal, the said James Rosenthal being at the said time a partner in the law business of Adolph Kurz and A. J. Hirschl and being

at this time without the State of Illinois; that John W. Byam, Charles L. Mahoney, A. J. Hirschl, Adolph Kurz, and James Rosenthal were all the persons who appeared of record as the attorneys of said Dora Marks in said cause in the supreme court of Illinois, wherein Louis Jacobs was plaintiff in error and Dora Marks was defendant in error, and that no other attorney appeared for her in said cause or has since appeared for her in said cause.

MICHAEL GESAS.

Subscribed and sworn to before me this 21st day of August, 1900.

[Seal of Daniel M. Rothschild, Notary Public, Cook Co., Ill.]

DANIEL M. ROTHSCHILD,
Notary Public.

[Endorsed:] Supreme Court of the United States. Louis Jacobs, plaintiff in error, *vs.* Dora Marks, defendant in error. Citation. To the Supreme Court of the United States.

352 In the Supreme Court of Illinois.

LOUIS JACOBS
vs.
DORA MARKS. } Error to Appellate Court, First District.

I, Christopher Mamer, clerk of the supreme court of Illinois, elected for the northern grand division, and keeper of the records and files thereof, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the foregoing pages, numbered from one (1) to three hundred and fifty-one (351), inclusive, contains a true and complete transcript and copy of the record and proceedings had in said court in the case which is above entitled and of the whole thereof, including the opinion of the court, as the same remain of record and on file in my said office, and also the original writ of error and citation, with return thereon, copies of which said writ of error and citation have been lodged in my office, at Springfield, Illinois.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

In testimony whereof I have hereunto set my hand and caused the seal of said supreme court of Illinois to be hereunto affixed, at Springfield, this 24th day of August, in the year of our Lord one thousand nine hundred.

CHRISTOPHER MAMER,
Clerk of Supreme Court.

{ Ten-cent United States internal-revenue stamp, canceled Aug. 24, 1900. C. M. }

353 In the Supreme Court of the United States, October Term, 1900.

LOUIS JACOBS, Plaintiff in Error,
vs.
DORA MARKS, Defendant in Error.

* * * * * * *

To the Honorable James H. McKenney, clerk of said court:

Please take notice that, under rule ten, ninth paragraph, of said court, we have, on behalf of the plaintiff in error herein, prepared a statement of errors on which he intends to rely, and have designated the parts of the record which he thinks necessary for the consideration thereof, and have served on the adverse party a copy of such statement and parts of record, in accordance with said rule, which said statement of errors and designation of parts of the record, together with service of notice on the adverse party and acceptance of service, are hereto annexed, to be printed under your supervision for the use of the court, in accordance with the rules of the court.

Also that the attorneys for the defendant in error have, under said rule ten, designated additional parts of the record which they think material, and have served us with a copy thereof, and we consent that such parts of the record be also printed in the record to be prepared by you for the use of the court, in accordance with said rule ten, such additional parts being hereto attached.

LOUIS J. BLUM,
EDGAR C. BLUM,
Attorneys for Plaintiff in Error.

354 In the Supreme Court of the United States of America, October Term, A. D. 1900.

LOUIS JACOBS, Plaintiff in Error,
vs.
DORA MARKS, Defendant in Error.

* * * * * * *

Statement of errors relied on and part of record deemed necessary for the consideration thereof, filed with the clerk of said court under ninth paragraph of rule ten.

The errors relied upon are as follows:

1. The court below erred in failing to give full faith and credit to the judicial record and proceedings of the circuit court of Delta county, State of Michigan, in the case of Dora Marks *vs.* The Chicago Furniture & Lumber Company, which records and proceedings included the following order of court: "This cause having been settled, it is hereby discontinued by consent of both parties;" which said suit, as shown by the evidence in this cause, involved the same subject-matter involved in the present suit, and which said judicial records and proceedings were duly pleaded in bar herein by the plaintiff in error and introduced in evidence on the trial of this

cause; and, in failing to hold that said judgment, record, and proceedings of the Michigan court constituted a bar to the present action, the courts below failed to give full faith and credit to the record and judicial proceedings of the said circuit court of Delta county, Michigan, contrary to article 4 of the Constitution of the United States, which provides: "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State."

2. The supreme court of Illinois erred in failing to reverse said judgment by reason of the failure of the courts below to give full faith and credit to said judicial records and proceedings of the circuit court of Delta county, Michigan, as required by said article 4 of the Constitution of the United States.

3. The supreme court of Illinois erred in failing to reverse said judgment by reason of the refusal of the circuit court of Cook county to give the following instructions asked by the plaintiff in error: "The jury are instructed that it appears by a certified
355 copy of the record of the judgment entered in the case of Dora Marks *vs.* The Chicago Funiture & Lumber Company in the circuit court of Delta county, Michigan, that said cause was settled between said parties; that said cause pending in said Michigan court was based upon the same cause of action on which the present suit is based, and involved the same subject-matter, and that the settlement of said cause constituted a settlement of the present cause of action." By this refusal the said circuit court failed to give full faith and credit to the judicial records and proceedings of the said circuit court of Delta county, Michigan.

4. The court below erred in failing to reverse said judgment by reason of the refusal of the circuit court of Cook county to give the following instruction asked by the plaintiff in error:

"18. You are instructed that the undisputed evidence in this case shows that in December, 1893, the plaintiff herein brought a suit in the circuit court of Delta county, Michigan, against the Chicago Furniture & Lumber Company upon the same cause of action and involved the same subject-matter involved in this suit; that thereafter the parties to said suit came to a settlement thereof, and that settlement is a complete bar to the present action, and your verdict must be for the defendant herein." By this refusal the said circuit court failed to give full faith and credit to the judicial records and proceedings of the said circuit court of Delta county, Michigan, in evidence in this cause.

5. The court below erred in failing to reverse said judgment by reason of the refusal of the circuit court of Cook county to give the following instruction asked by plaintiff in error:

"21. The jury are instructed to find a verdict for the defendant herein." By this refusal the said circuit court failed to give full faith and credit to the judicial records and proceedings of the said circuit court of Delta county, Michigan, in evidence in this cause.

6. The supreme court of Illinois erred in not reversing said judgment by reason of error of the circuit court in denying the motion of plaintiff in error to set aside the verdict and grant a new trial

herein on the grounds specified in said motion for a new trial, that the verdict and the action of the court fail to give full faith and credit to the judgment of the circuit court of Delta county, Michigan, in the case of Dora Marks *vs.* The Chicago Furniture and Lumber Company, contrary to art. 4, sec. 1, of the Constitution of the United States, which provides: "Full faith and credit shall be given in every State to the public acts, records, and judicial proceedings of every other State."

356 7. The judgment of the courts below failed to give full faith and credit to the judicial records and proceedings of the circuit court of Delta county, Michigan, in said case of Dora Marks *vs.* The Chicago Furniture & Lumber Company, and thus deprived the plaintiff in error of his rights and privileges under said article 4 of the Constitution of the United States.

The parts of the record deemed necessary for the consideration of these questions are as follows:

Page	
1	Placita of the supreme court as follows: Beginning from top of page, including the words "which said transcripts are in the words and figures following, viz:"
2–3	*Scire facias.*
3–4	Citation.
5	Full page, containing placita circuit court, Cook county.
6	Summons down to and including return.
10–13	Plaintiff's declaration stating her cause of action (to be set out in full).
15–16	Appearance of attorneys for defendant, Louis Jacobs (to be set out in full).
24	The last replication, being the replication that takes issue on the plea of general issue.
25–34	Additional pleas, being pleas of satisfaction setting up the judgment of the circuit court of Delta county, Michigan, in Marks *vs.* Chicago Furniture & Lumber Company (to be set out in full).
36	Replication to additional pleas (in full).
37	Plea of general issue of defendant " "
38	Verdict of jury, as follows: "We, the jury, find the defendant guilty and assess the plaintiff's damages at four thousand dollars ($4,000)."
39	Judgment of court on verdict and allowance of appeal, beginning from the words in the 4th line "Thereupon, on motion of plaintiff's attorney."
42	The order of court granting leave to defendant to file additional pleas.
45	Order overruling defendant's motion for a new trial. Also order reducing appeal bond to $250.00.

47 MARKS
vs.
JACOBS.

Bill of Exceptions.

357 Be it remembered that this case came on for trial on the 14th day of July, A. D. 1897, before his honor Richard W. Clifford, one of the judges of said court, at the court-house, in the city of Chicago, county of Cook and State of Illinois, at 3 o'clock p. m., John W. Byam, Esq., and C. L. Mahoney, Esq., appearing for the plaintiff, and Messrs. Blum & Blum for the defendant; whereupon the plaintiff, to maintain the issues on her part in this behalf, introduced the following testimony—that is to say:

DORA MARKS, plaintiff, being first duly sworn, testified in her own behalf as follows:

Direct examination by Mr. BYAM:

Q. What is your name?
A. Dora Marks.
Q. Do you know the defendant in this case?
A. Yes, sir.
57 Jacobs went up to Escanaba and he was gone two nights.
Q. Did Neufeld go with him?
58 A. Neufeld went with him, and he returned early in the morning, about seven or eight o'clock, and he rapped at our door and he says to his wife and I, "Hurry up and get up; I must tell you all about this plant up at Escanaba." So we got up and dressed ourselves, and he went on telling what a glorious plant there was at Escanaba and what a big thing he had there.
We met every day, and the 6th of June he asked me to go up to Escanaba.
59 After breakfast, Mr. Jacobs, Mr. Neufeld, and Mrs. Jacobs and I went down to the factory to see this plant, and they showed me the plant.
62 Well, on the train Mr. Jacobs says, Now, he says, this is a big thing, he says, "and I would like to have you in with us because I know we are going to make lots of money."
63 I asked Mr. Jacobs, I says, "Who is Neufeld?" "Well," he said, "when I left Bradford I worked for Neufeld five years." He says, "You know that I am now living in Neufeld's house. I brought my bride right to this house. Neufeld is a wealthy man and a popular man." I says, "If he is a wealthy man what has he got?" "Well," he says, "he has a factory that is worth sixty thousand dollars," and I made the remark, "Has it any incumbrances on like I have incumbrances on my property in Denver?"

He says, "No; he don't need any incumbrances; his property is clear."

64 "Well," I says, "what else has he got?" He says, "He owns the house he is living in." I says, "What
358 is this house worth?" He says, "Twenty thousand dollars." I says, "Encumbered?" He says, "No encumbrance; and another thing, Neufeld has got money; he can go to the bank any time he wants and draw five or ten thousand dollars cash." And so I says to him, "How much cash have you got?" "Well," he says, "I have got twelve thousand five hundred dollars cash." I says, "Where have you got it?" He says, "I have got it so I can lay my hands on it." I says, "How much cash is Neufeld going to put into this?" and he says, "Twenty-five thousand dollars."

Q. Did he say where the factory was that Neufeld owned?

A. Yes; 413 to 419 West Fifteenth street.

Q. And the house, where was that?

A. 220 South Morgan street.

66 So I went down to the house on the 12th of June, and I met Gallup at Neufeld's house, and Mr. Jacobs says, "Mr. Gallup is here with the corporation papers to incorporate."

Q. What further was done there?

A. We signed the corporation papers there.

67 Q. Is that the paper that was signed?

A. Yes, sir.

Paper introduced in evidence and marked Plaintiff's Exhibit One.

67–68 Plaintiff's Exhibit 1 down to the words State of Michigan, county of Delta, *ss.*

70 And I took my certificate, and Jacobs wrote on it Chicago Furniture & Lumber Company, and I endorsed it, and Mr. Neufeld left that night for Escanaba to start the works.

74 Q. Did you get any of that money back of that seven thousand dollars certificate?

A. I received $2,000.00 back.

80 —. Did you get any stock of that concern?

A. Yes, sir.

Q. Have you got it with you?

A. Yes, sir.

Certificates introduced in evidence and marked Plaintiff's Exhibit 7.

81–82 Plaintiff's Exhibit 7 being the certificate of her stock in the Chicago Furniture & Lumber Company.

85 My attorneys and I went down to the factory and we examined the books.

86 Q. What did Jacobs read off that he had put in?

A. He put in one thousand dollars, and Neufeld had put in less than four thousand dollars in cash. I met Jacobs up at my attorneys' office, and my attorneys and I wanted to know what was going to be done, if they
359 were going to put anything more into the plant and run the plant as they told me; they would have to do something or I would commence proceedings or something.

88 Q. You stated that you received back two thousand dollars out of the seven thousand dollars; did you get any more at any time?

A. In July—the 25th of July—I needed a thousand dollars for my Denver property, and I asked them to loan me a thousand dollars, and Jacobs said that Neufeld had drawn out two thousand dollars and I could have a thousand dollars, so he gave me a thousand dollars.

Q. Leaving four thousand dollars?

A. Leaving four thousand dollars.

Q. Now, did you ever hear Jacobs say as to whether or not he had $12,500?

A. Yes; he said in the criminal court and before Justice Foster that he never had no $12,500.

Q. Did you hear him say what he did have?

A. Yes; he said that he had forty shares of stock in the Judkins Company, he had a two-thousand-dollar note and he had fifteen hundred dollars in Lazarus Silverman's bank.

91 Q. What became of the Chicago Furniture and Lumber Company; that was the name of the corporation?

A. That went to pieces there.

Q. What do you mean by went to pieces; did they keep on doing business or stop?

A. They stopped doing business.

Q. When did they stop doing business?

A. They had almost stopped in October doing business.

Q. When did they stop entirely?

A. In——

Q. About?

A. Jacobs left there in January, 1894, and they just gradually—Mr. Neufeld gradually kept along and worked because he had a $10,000 case against me, and then the whole thing came to an end in about February or March, or probably a little longer.

92 Q. Mrs. Marks, you have stated what representations Jacobs made to you as to his financial condition and the financial condition of Neufeld. I will ask you now if you believed those statements he made to you.

A. At the time he made the statements I believed every word of them.

Q. Did you rely on those statements in giving your money to Mr. Jacobs?
A. Yes; I did.

360 Cross-examination.

By Mr. BLUM:

105 Q. You testified in the case entitled Dora Marks *vs.* The Chicago Furniture & Lumber Company in the circuit court of Delta county, Michigan?
A. In Marquette?
Q. Yes.
A. Yes.
Q. That was an action to recover the $4,000 invested in that enterprise, was it not?
A. I would like to state a great many things, but I cannot.
Q. Answer the question.
106 A. There was a suit against them, an attachment.
Q. Brought by you to recover this $4,000?
A. Yes, sir.
Q. Did you testify there?
A. Before Judge Stone.
Q. You did?
A. Yes, sir.
108 Q. And you told Jacobs, signified to him your willingness to go into it on the 10th?
A. After he had made his representations to me and said what money they had I said I would go into it.
111 Q. Mrs. Marks, you invested $4,000 in that enterprise, didn't you?
A. Yes, sir.
Q. Did you ever invest any other money in it?
A. No, sir.
Q. Did you put any other money in it for stock?
A. That is what I gave them, $5,000.
A. And got back $1,000?
A. Yes, sir.
Q. Did you ever lend that company any money, the Chicago Furniture and Lumber Company?
A. No, sir; I never loaned them any money.
113 Q. Neufeld did go down there and start that factory, didn't he?
A. Yes, sir.
Q. They employed hands and went to work?
A. Yes, sir.
Q. They organized; Neufeld was president, you vice-president, and Jacobs secretary and treasurer. Is that right?
A. Yes, sir.
126 Q. Mrs. Marks, I show you an affidavit made in the

case pending in the circuit court of Delta county, Michigan, case Dora Marks *vs.* The Chicago Furniture and Lumber Company, dated the 4th day of December, 1893, and ask you if that is your signature upon that affidavit.

A. Yes, sir.

144 361 NATHAN NEUFELD, a witness called in behalf of the plaintiff, having first been duly sworn, testified as follows:

Direct examination by Mr. BYAM:

Q. What is your name?

A. Nathan Neufeld.

Q. Do you know the legal description of the premises you reside in?

A. I would not be quite sure, but I think I remember.

Q. Who was the owner of these premises in 1893? Were you the owner of said premises prior to the 1st day of July, 1893?

A. I was not.

145 —. Were you the owner of a factory in the city of Chicago in the month of May or June of 1893?

A. I am not quite sure; I don't think I was. I owned it just previous to that.

Q. Where was the factory you owned just previous to that?

A. At the same place.

Q. What place?

A. Northeast corner 15th and Throop streets.

Cross-examination by Mr. BLUM:

Q. Mr. Neufeld, you say you were the owner of that house, 220 South Morgan street?

A. I don't think I was at that time.

146 Q. Were you at any time the owner of that house?

A. I was.

Q. To whom did you convey it?

A. To Mrs. Neufeld, my wife.

154 Mrs. MARKS recalled.

(Examined by Mr. ATTORNEY FOR PLAINTIFF:)

Q. Mrs. Marks, that stock that you hold, is it worth anything?

155 A. I know the stock is not worth anything.

161 Plaintiff now rests in chief.

162 And thereupon the defendant, to maintain the issues on his part, introduced the following testimony—that is to say:

Insert all of pages 166, 167, 168, and 169, covering the introduction in evidence of a copy of the proceedings of the case of Dora Marks *vs.* The Chicago Furniture and Lumber Company in the circuit court of Delta county, Michigan, marked Defendant's Exhibit 3.

Also insert from beginning of page 170 to the signature "The Chicago Furniture & Lumber Co., by N. Neufeld, pres't" (being part of said proceedings).

173–174 From the words "That afterwards, to wit, on the 18th day of December, 1893, the following order was entered by said circuit court in said cause by the Hon. John W. Stone, circuit judge of said court, which order is as follows" (setting it out in full).

362 All of pages 174, 175, 176, 177, 178, and 179 relating to the same proceeding.

180 "virtue thereof be restored to the said Chicago Furniture & Lumber Company, the defendant therein.

Dated December 16th, 1893.

J. W. STONE,
Circuit Judge, 25 Circuit.

That afterwards, to wit, on the 8th day of January, 1894, there was filed in said cause the writ of attachment in said cause, together with the return of the sheriff on said writ" (relating to the same proceedings).

186–187 Declaration of the plaintiff in same proceeding.

188 Demand of defendant for a trial.

189–190 All of pages 189 and 190, containing the order of court and certificates.

191 From beginning of page up to, but not including, the words "George Gallup" (being certificate of clerk relating to the same proceedings).

240 LOUIS JACOBS, defendant, having first been duly sworn, testified in his own behalf as follows:

Direct examination by Mr. BLUM:

Q. You may state your full name.

A. Louis Jacobs.

261 Q. At that time what, if anything, interfered with the progress of the business?

A. The first thing that put a stop to the business there the sheriff came there—I think it was the sheriff—and attached the place and made a seizure of the whole place.

Q. Who brought that action?

A. Mrs. Marks.

Q. That was an action, I understand, commenced by Mrs. Marks against the Chicago Furniture and Lumber Company in Delta county, Michigan?

A. It was.

Q. What was the action brought for?

A. To recover $4,000 that she had invested in the business.

Q. The $4,000 of this suit?

A. Yes, sir.

299 Defendant rests.

And thereupon the plaintiff introduced in rebuttal the following testimony:

303 Mrs. MARKS, recalled in rebuttal, testified in her own behalf as follows:

(Examined by Mr. BYAM:)

305 Q. There is some evidence here about an order of some sort that was entered into the court up there by
363 which you dismissed your suit—their suit against you?

The COURT: She has not been asked about that. There is no oral testimony of that kind in this case?

Mr. BYAM: No, your honor.

Q. Was that result brought about by virtue of a contract which you had with the Chicago Furniture and Lumber Company?

306 The COURT: Was there any writing about a dismissal of that suit?

A. Yes; we had it in writing.

The COURT: If you have any writing, let me see it.

306–307 Plaintiff's Exhibit 11 being the settlement agreement between the Chicago Furniture & Lumber Company and Dora Marks.

307 Paper offered in evidence and marked Plaintiff's Exhibit 11. Insert said Exhibit 11, set out on the preceding page.

Q. Did you ever call on the president of that company to carry out this contract on the part of the corporation?

Objected to by counsel for defendant. Objection overruled. Exception by counsel for defendant.

Q. What did he say?

308 Objected to by counsel for defendant. Objection overruled. Exception by counsel for defendant.

A. No, sir; he never carried it out.

Q. What did he say?

Objected to by counsel for defendant. Objection overruled. Exception by counsel for defendant.

A. He said that he would not give me anything, that the stock was not worth anything, and he said he would not give me a cent for the stock.

Q. About what time did you call on him about that?

Objected to by counsel for defendant. Objection overruled. Exception by counsel for defendant.

A. July or August, 1894.

311 The foregoing was all the evidence offered or received on the trial of said cause.

And thereupon counsel for defendant again moved the court to take the case from the jury; which motion was denied by the court; to which ruling the defendant then and there excepted.

311–316 364 Instructions of the court; to be set out in full.

316 And the defendant also asks the court to give to the jury the following written instuctions:

317 16. The jury are instructed that it appears by a certified copy of the record of the judgment entered in the case of Dora Marks *vs.* The Chicago Furniture & Lumber Company in the circuit court of Delta county, Michigan, that said cause was settled between said parties; that said cause pending in said Michigan court was based upon the same cause of action on which the present suit is based, and involved the same subject-matter, and that the settlement of said cause constituted a settlement of the present cause of action.

18. You are instructed that the undisputed evidence in this case shows that in December, 1893, the plaintiff herein brought a suit in the circuit court of Delta county, Michigan, against The Chicago Furniture & Lumber Company upon the same cause of action and involved

318 the same subject-matter involved in this suit; that thereafter the parties to said suit came to a settlement thereof, and that settlement is a complete bar to the present action, and your verdict must be for the defendant herein.

21. The jury are instructed to find a verdict for the defendant herein.

But the court refused to give these instructions to the jury; to which refusal of the court to give the same and each of them to the jury the defendant, by his counsel, then and there excepted, and thereupon the jury rendered the following verdict:

We, the jury, find the defendant guilty, and assess the plaintiff's damages at $4,000.00.

319 And thereupon — a subsequent day of the term, before any judgment was rendered on the verdict, the said defendant, by his counsel, moved the court to set aside the verdict and special finding of the jury and for a new trial in said cause upon the grounds and for the reasons set forth in writing as follows:

319–320 Motion for new trial (to be set out in full).

320 But the court, after hearing the said motion for defendant to set aside the verdict of the jury and special finding of the jury and for a new trial, overruled the same;
365 to which rulings and decision of the court the defendant, by his counsel, then and there excepted.

321 The court rendered judgment upon the said verdict; to which rulings and decision of the court the defendant, by his counsel, then and there excepted.

And forasmuch as the matters above set forth do not fully appear of record the defendant, by his counsel, tenders this his bill of exceptions and prays that the same may be signed and sealed by this court pursuant to the statute in such case made and provided, which is done accordingly this 8th day of February, A. D. 1898.

RICHARD W. CLIFFORD, [SEAL.]
Judge Circuit Court.

321–322 Appeal bond (to be set out in full).
322–323 Certificate of clerk of the circuit court (to be set out in full).
323–324 Assignment of errors in the appellate court (to be set out in full).
325 Certificate of clerk of appellate court (to be set out in full).
326 Page set out in full, being the placita of appellate court and order taking case under advisement.
327 Set out in full, being order of court reversing judgment.
328 Set out in full, being order of court allowing rehearing, etc.
328–329 Order of court affirming the judgment.
329–330 Certificate of clerk of appellate court (to be set out in full).
330–332 Assignment of errors in the supreme court of Illinois (to be set out in full).
333 Page to be set out in full, being placita supreme court.
335 Entry of appearance of Dora Marks, defendant in error (to be set out in full).
336 Order taking case under advisement (to be set out in full).
337–338 To be set out in full, containing order of affirmance of judgment.
339–341 Opinion of the supreme court of Illinois (to be set out in full).
342 Certificate of clerk supreme court of Illinois (to be set out in full).
343–345 366 Assignment of errors in the Supreme Court of the United States; to be set out in full.
348 Writ of error to the supreme court of Illinois (to be set out in full).
349 Bond (to be set out in full).

350–351 Citation from the Supreme Court of the United States to Dora Marks, to be set out in full, and affidavits thereto.

Final certificates of the clerk of the supreme court of Illinois; to be set out in full.

367 In the Supreme Court of the United States, October Term, 1900.

LOUIS JACOBS, Plaintiff in Error,
vs.
DORA MARKS, Defendant in Error.

Hon. John F. Dillon, attorney for defendant in error:

Please take notice that under paragraph nine of rule ten of said court we have sent to the clerk of said court a statement of errors on which the plaintiff in error herein relies, and have designated the parts of the record deemed necessary for the consideration thereof, a copy of which statement and parts of record is herewith served upon you and each of you.

Chicago, October 25th, 1900.

LOUIS J. BLUM,
EDGAR C. BLUM,
Attorneys for Plaintiff in Error.

I hereby accept service on behalf of the defendant in error of a copy of the foregoing papers this 25th day of October, 1900, and consent that the same, together with the additional parts of the record designated on behalf of the defendant in error herein, shall be printed by the clerk of said court and submitted to the court as the record in said cause.

JOHN F. DILLON (A. J. W.),
Attorney for Defendant in Error.

368 In the Supreme Court of the United States, October Term, 1900.

LOUIS JACOBS, Plaintiff in Error,
vs.
DORA MARKS, Defendant in Error.

To Messrs. John W. Byam, Andrew J. Hirschl, and C. L. Mahoney, attorneys in the supreme court of Illinois for the defendants in error:

You are hereby notified that under paragraph nine of rule ten of said court we have sent to the clerk of said court a statement of errors on which the plaintiff in error herein relies, and have designated the parts of the record deemed necessary for the consideration thereof, a copy of which statement and parts of record is herewith served upon you and each of you.

Chicago, October 25th, 1900.

LOUIS J. BLUM,
EDGAR C. BLUM,
Attorneys for Plaintiff in Error.

We hereby accept service on behalf of the defendant in error of a copy of the foregoing papers this 25th day of October, 1900, and consent that the same, together with the additional parts of the record designated on behalf of the defendant in error herein, shall be printed by the clerk of said court and submitted to the court as the record in said cause.

ANDREW J. HIRSCHL,
JOHN W. BYAM,
C. L. MAHONEY,
Attorneys for Defendants in Error in Supreme Court of the State of Illinois.

369 In the Supreme Court of the United States, October Term, 1900.

LOUIS JACOBS, Plaintiff in Error,
vs.
DORA MARKS, Defendant in Error.

To the Honorable James H. McKenney, clerk of said court:

Please take notice that under rule ten, paragraph nine, of said court I have, on behalf of the defendant in error herein, designated additional parts of the record deemed material for the consideration of the case, and have served on the adverse party a copy of such additional parts of record in accordance with said rule, which additional parts of record are attached to the statement of errors and parts of the record designated by the plaintiff in error herein, all together to be prepared by you as the record for the use of the court.

JOHN F. DILLON (H.),
Attorney for Defendant in Error.

370 In the Supreme Court of the United States, October Term, 1900.

LOUIS JACOBS, Plaintiff in Error,
vs.
DORA MARKS, Defendant in Error.

Additional Parts of the Record Designated by the Defendant in Error under Rule Ten of the Court.

Page
66 (In the testimony of DORA MARKS:)

Jacobs said we can get any kind and all kinds of lumber that we want to manufacture with.

Q. After that conversation where did you go? Do you recollect?

A. I went back to Neufeld's house.

Q. Any further conversations with Jacobs about that time about your moneys? If you don't recollect any, do you remember of meeting this man Gallup again?

A. Yes; on the 11th Mr. and Mrs. Jacobs and I had an ap-

pointment; we were going out to the World's fair, and Jacobs says, "Be sure and be down tomorrow morning."

Q. That was the 11th.

A. The 11th of June. So I went down to the house on the 12th of June, and I met Gallup at Neufeld's house, and Mr. Jacobs says, "Mr. Gallup was here with the corporation papers to incorporate," and I says, "Now, Mr. Gallup," I says, and to Mr. Jacobs and to Mr. Neufeld I says, "I don't know anything about business. Now, if Mr. Jacobs loses he loses his twelve thousand five hundred, Mr. Neufeld loses his twenty-five thousand, and I lose my five thousand. Are we responsible for any more?" And he says, "No; you are not responsible for any more than the sum you are going to put in," and I wanted to be sure about that, and he said that he knew if the business went against us we would not lose or be responsible for any more than we put in.

Q. This was the talk that you had in the presence of Mr. Jacobs?

A. Mr. Jacobs and Mr. Neufeld.

Q. What further was done there?

A. We signed the corporation papers there.

Q. I will ask you if you knew that Gallup was to come down from Escanaba with papers.

A. No, sir.

Q. Was there any talk between you and Gallup that he was to be down here on the 12th or any time?

A. No, sir.

Page

67 Q. Is that the paper that was signed?

A. (After examining paper.) Yes, sir.

371 Paper introduced in evidence and marked "Plaintiff's Exhibit 1." Said Exhibit 1 is set out on the following pages. Insert Exhibit 1 in full.

Q. What happened after that? This was on the 12th.

A. After that we went along as usual. We met every day, and we visited the mother, and we went to the World's fair, and on the 17th I was down to Neufeld's house, and Mr. Jacobs says, "Now we have to get our money."

Q. That was on the 17th?

A. Yes, sir.

A. (Continuing:) "Now, Neufeld is going up to Escanaba tonight, and we want your money." "Well," I says, "have you got your money?" and they said, "Yes." Jacobs says, "I have my money here and Neufeld has his money."

Q. What did they do?

69 A. They showed me three papers.

Q. Who showed them to you?

A. Mr. Jacobs and Mr. Neufeld showed me three papers. They says, "Here is three papers," and the white paper was

Jacobs' paper. This money and that paper looked exactly like my certificates, and Mr. Neufeld's was two light-blue papers.

70 Q. Is that the certificate?

A. Yes, sir.

Q. Like that?

A. Yes. Jacobs' looked just like that. He held it up, and says, "Here is my money."

Q. What did Neufeld do?

A. He showed me his papers.

Q. What color were his papers?

A. A light blue.

167 Q. At the time you went out of that business you say that stock had no value?

A. Yes, sir.

Q. Do you know whether or not the company had any assets on hand at that time, no property of any kind—the Chicago Furniture & Lumber Company?

A. They had some machinery, but Neufeld sold all that machinery.

Q. When?

A. He sold that in July or August.

Q. Of what year?

A. 1893.

Q. 1893?

A. 1894.

Q. When did you go away from Escanaba?

A. I went away from Escanaba in July, 1894.

Q. Do you mean to say that Neufeld sold his interest in the Chicago Furniture & Lumber Company to Benedict Wolf?

—. ——.

A. Wolf took Jacobs' place?

A. Yes.

Q. Isn't it a fact that at the time you made the levy, when you got out the writ of attachment and the sheriff made his levy, that the company had on hand some machinery and lumber which was appraised at about $8,000.00?

A. $7,000 or $8,000, but they owed for it.

372 Q. Do you know what other property they had on hand at that time?

A. They didn't have any other.

Q. Do you know whether or not they had any book accounts outstanding?

A. Well, I know that the Wolf Lumber Company made an attachment.

The COURT: Did they have any persons owing them? Do you know of any persons owing the company?

A. I don't know of any.

Q. Do you know who were the stockholders at that time of the Chicago Furniture & Lumber Company?

A. At that time?

Q. At the time you got out the attachment?

158 A. Neufeld, Jacobs, and myself.
Q. You were the only ones?
A. Yes; the three of us.
Q. You say that Neufeld had not at that time paid up the full amount of his stock subscription.
A. No, sir.
Q. He was indebted to the company, was he not, for the balance of the stock subscription?
A. Yes, sir.

Redirect examination by Mr. BYAM:

Q. Do you know whether or not there were any judgments against the company at that time?

Objected to by counsel for defendant as incompetent.
The COURT: She may tell if she knows.
Exception by counsel for defendant.

A. The company owed the Wolf Lumber Company, and they owed in Escanaba for repairing some of the machines, and they owed for these that I know of, for these two machines they got; they owed for them, and they owed the working hands.

Mr. BLUM:

Q. Were not these two machines paid for?
A. I don't know. When we made the attachment I know they took them out and sold them.
Mr. BYAM: Who did?
A. Neufeld and Jacobs.
Mr. BLUM: That is all you know about it?
A. Yes.
Mr. BYAM: What did Jacobs say?
A. Jacobs says Neufeld had the impudence to take out while the attachment was had; the sheriff was not under bond, and Jacobs and Neufeld went into the factory and took out two large machines and sold folding beds to private individuals and got $10 and $20 apiece for some of the folding beds and
159 put the money into his pocket.
373 Q. Who put the money in his pocket?
A. Jacobs and Neufeld together.
Q. When you say that Jacobs and Neufeld had the impudence what do you mean by that?
A. He said he had the impudence to take the machines out and he didn't have any right to do it. He said he had the impudence to take the machines out of the factory.
Q. What was done with the machines?
A. He sold them.
Q. Who sold them?
A. Jacobs and Neufeld.
Q. How do you know?

A. Jacobs said so. Jacobs was laughing over it, to think the sheriff had made an attachment and to think that the law was such in Michigan, after the sheriff made the attachment, that they could go into the factory and take these things out.

Q. Do you know how much that company owed?

A. I don't know how much they owed altogether.

Q. About how much?

A. $5,000 they said they owed.

The COURT: Who said that?

A. Jacobs.

Mr. BLUM: To whom did he say that?

A. To me and some more people in the Luddington hotel.

Q. When did Jacobs say that to you?

A. They were talking it over about the concern and he says, Well, he says, this is a great thing, and some of the gentlemen——

Mr. BLUM: I am asking you when.

374 In the Supreme Court of the United States, October Term, 1900.

LOUIS JACOBS, Plaintiff in Error,
vs.
DORA MARKS, Defendant in Error.

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Louis J. Blum and Edgar C. Blum, attorneys for plaintiff in error:

You are hereby notified that, in accordance with rule ten of said court, I have prepared a statement of the additional parts of the record deemed necessary by the defendant in error for the consideration of the case by the court, which I herewith send you, to be sent by you to the clerk of said court, and which, together with the statement of errors prepared by you and designation of the parts of the record in support thereof, shall be printed by said clerk for the use of the court.

JOHN F. DILLON (H.),
Attorney for Defendant in Error.

We hereby acknowledge receipt of the statement of the additional parts of the record above referred to, and agree to send the same, together with the statement of errors relied on by plaintiff in error herein and the parts of the record deemed necessary for the consideration thereof, to the clerk of said court to make up the record in accordance with the rules of court.

LOUIS J. BLUM,
EDGAR C. BLUM,
Attorneys for Plaintiff in Error.

374½ [Endorsed:] Supreme Court of the United States, October term, 1900. Louis Jacobs, plaintiff in error, *vs.* Dora Marks, defendant in error. Errors relied upon and parts of record deemed necessary. Blum & Blum, attorneys and counsellors at law, Chicago.

375 [Endorsed:] File No., 17,895. Supreme Court U. S., October term, 1900. Term No., 410. Louis Jacobs, pl'ff in error, *vs.* Dora Marks. Statement of errors and designation by both pl'ff in error and def't in error of parts of record to be printed, and notice. Filed Oct. 27, 1900.

Endorsed on cover: File No., 17,895. Illinois supreme court. Term No., 410. Louis Jacobs, plaintiff in error, *vs.* Dora Marks. Filed September 1st, 1900.